

HOUSE No. 1034

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Lawn, Jr.

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 to strengthen the state credit union charter.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/18/2019</i>

HOUSE No. 1034

By Mr. Lawn of Watertown, a petition (accompanied by bill, House, No. 1034) of John J. Lawn, Jr., relative to the state credit union charter. Financial Services.

The Commonwealth of Massachusetts

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

An Act to strengthen the state credit union charter.

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, as appearing in the 2016 Official
2 Edition, is hereby amended by striking section 4 and inserting in place thereof the following
3 section:-

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

boards. If the commissioner, after such notice and hearing as the commissioner may require, is satisfied that a merger or consolidation may be effected on terms approved by the commissioner and finds that such merger or consolidation is in the interests of the depositors, shareholders or members of the institutions concerned, such merger or consolidation may be approved by the commissioner subject to the commissioner's direction. In making a finding that any such merger or consolidation is in the interests of depositors, shareholders or members, the commissioner shall also determine whether competition among banking institutions or credit unions will be unreasonably affected and whether public convenience and advantage will be promoted. In making such determination, the commissioner shall consider, at a minimum, a showing of net new benefits. For the purposes of this section, the term "net new benefits" shall include initial capital investments, job creation plans, consumer and business services, commitments to maintain and open branch offices within the bank or credit union's delineated community, as such term is used within section 14 of chapter 167, and such other matters as the commissioner may deem necessary or advisable.

Before becoming effective, any merger or consolidation authorized by this section, hereinafter referred to as a "consolidation", shall have been approved by a vote of at least 2/3 of the voting body of each mutual bank, subsidiary banking institution or credit union present, qualified to vote and voting at a meeting specially called to consider the subject and approved by a vote of at least a majority of the members, corporators or shareholders of each credit union or bank present, qualified to vote and voting at a meeting specially called for that purpose. Notice for such meetings shall be given in accordance with the relevant provisions of law. A certificate under the hands of the presidents and clerks or other duly authorized officers of all merging or consolidating corporations and credit unions setting forth that each institution, respectively, has

37 complied with the requirements of this section shall be submitted to the commissioner who, if
38 approving such consolidation, shall endorse such approval upon such certificate. No such
39 transaction under this section shall be consummated until arrangements satisfactory to any excess
40 deposit insurer of each such bank or credit union, if applicable, have been made and notice
41 thereof has been received by the commissioner.

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

45 SECTION 2. Said chapter 167I, as so appearing, is hereby amended by striking out
46 section 10 and inserting in place thereof the following section:-

47 Section 10. A credit union may convert to a mutual bank and a mutual bank may convert
48 to a credit union pursuant to section 80A of chapter 171. A federally-chartered credit union may
49 convert to a mutual bank and a mutual bank may convert to a federally-chartered credit union
50 pursuant to the Federal Credit Union Act subject to the approval of the commissioner under such
51 conditions as may be imposed by the commissioner and subsection (m) of section 80A of chapter
52 171.

53 SECTION 3. Chapter 171 of the General Laws, as appearing in the 2016 Official Edition,
54 is hereby amended by inserting after section 29 the following section:-

55 Section 29A. The board of directors of a credit union may receive payments on uninsured
56 non-share accounts subject to such terms, rates, and conditions as may be established by the
57 board of directors, within limitations prescribed by the commissioner. With respect to any
58 insured credit union other than a low-income credit union, uninsured non-share accounts shall (i)

not alter the cooperative nature of the credit union; (ii) be subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the National Credit Union Share Insurance Fund; iii) be available to be applied to cover operating losses of the credit union in excess of its retained earnings and, to the extent so applied, will not be replenished; (iv) if they have a stated maturity, have an initial maturity of at least 5 years; (v) if they have a stated maturity, the net worth value of such accounts may be discounted at the discretion of the commissioner when the remaining maturity is less than 5 years; (vi) are subject to disclosure and consumer protection requirements as determined by the board; (vii) are offered by a credit union that is determined by the commissioner to be sufficiently capitalized and well-managed; (viii) are subject to such rules and regulations as the commissioner may establish; and (ix) are authorized by the National Credit Union Administration.

SECTION 4. Section 67 of said chapter 171, as so appearing, is hereby amended by adding the following 3 clauses:-

(w) in any capital stock of a corporation organized for the purpose of acquiring and managing interests in real property and acquiring, constructing, rehabilitating, leasing, financing and disposing of housing facilities, or in any other interest in real or personal property or activities incidental thereto, debt security, equity security, loan or community benefits; provided, however, that (a) not more than 7 percent of the deposits of a credit union shall be invested pursuant to the provisions of this paragraph; and provided, further, that any amount in excess of 3 percent of said 7 percent shall be invested by such credit union in the following manner: (i) in the capital stock of a corporation organized for the purpose of acquiring, constructing, rehabilitating, leasing, financing and disposing of housing facilities; (ii) for the purpose of micro-lending in the area of small business, including the fishing industry, and farm loans; and (iii) for

the purpose of providing technical assistance to nonprofit housing corporations, small businesses and farms for the purpose of establishing credit worthiness; (b) no investment shall be made by such corporation in the equity securities of any one issuer pursuant to this paragraph if the aggregate amount invested by it in the equity securities of such issuer pursuant to this paragraph together with the amount invested in such securities pursuant to any other provision of law exceeds, or by the making of such investment will exceed, 2 percent of the deposits of such corporation, and no investment shall be made by such credit union in a loan to, or the debt securities of, any one issuer pursuant to this paragraph, if the aggregate amount invested by it pursuant to this paragraph together with the amount invested in a loan to, or in the debt securities, of such issuer pursuant to any other provision of law exceeds 2 percent of the deposits of such credit union; (c) any loan made or debt security purchased pursuant to this paragraph shall be secured over the term of the loan or the debt security; (d) this paragraph shall not be deemed to alter any provision of this chapter or other provision of law limiting the aggregate amount that may be invested in any class of loan or investment, except for (ii) and (iii), above, which shall be in addition to any such provision of this chapter or other provision of law; and (e) investments authorized solely by this paragraph shall not be deemed investments in which credit unions may legally invest for the purposes of any other provision of law which restricts investments to those in which credit unions may legally invest.

(x) to engage in an activity and to acquire and retain the shares of any company engaged in any activity that the commissioner determines to be financial in nature or incidental to the financial activity that is complementary to a financial activity and does not pose a substantial risk to the safety and soundness of the credit union, subject to the approval of the commissioner and under limitations or conditions he may impose. In determining whether an activity is financial in

nature or incidental or complementary thereto, the commissioner shall consider, but shall not be limited to, those activities considered to be financial in nature or incidental to the financial activity or an activity that is complementary to a financial activity under section 103, section 121 and section 122 of Public Law 106-102, entitled the “Gramm-Leach-Bliley Act of 1999”. Notwithstanding any general or special law to the contrary, this chapter does not authorize a credit union or a subsidiary or affiliate of a credit union to sell title insurance.

(y) to participate in the redevelopment access to capital program created under section 60 of chapter 23A and to make the loans and create the reserve and take other actions necessary or appropriate for participating in the program.

SECTION 5. Section 65E of said chapter 171, as so appearing, is hereby amended by adding the following paragraphs:-

With the approval of the Commissioner, any credit union may purchase and acquire loans or assume an assignment of deposits, shares, or liabilities from:

(i) Any other federally insured credit union, federal credit union, foreign credit union or banking institution, as defined in section 1 of chapter 167A, mortgage company, consumer finance company, or insurance company; or

(ii) Any successor in interest to any institution identified in paragraph (i) of this section.

Approval is not required for:

(i) Purchases of student loans or mortgage loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market or purchases of member loans under this chapter;

(ii) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member.

(iii) Purchases of assets, including loans or mortgage loans, or assumptions of deposits, shares, or liabilities by any federally-insured credit union from another federally-insured credit union, except a purchase or assumption as a part of a merger or

(iv) Purchases of loan or mortgage loan participations under this chapter.

SECTION 6. Said chapter 171, as so appearing, is hereby amended by striking out section 78A and inserting in place thereof the following section:-

Section 78A. Any 1 or more credit unions may merge or consolidate with 1 or more savings banks, as defined in section 1 of chapter 168, or 1 or more co-operative banks, as defined in section 1 of chapter 170, or 1 or more subsidiary banking institutions, as defined in section 1 of chapter 167H and section 4 of chapter 167I. Any 1 or more savings banks, as defined in section 1 of chapter 168, co-operative banks, as defined in section 1 of chapter 170, or 1 or more subsidiary banking institutions, as defined in section 1 of chapter 167H and section 4 of chapter 167I may merge or consolidate with 1 or more credit unions.

SECTION 7. Section 80 of said chapter 171, as so appearing, is hereby amended by adding the following paragraph:-

A credit union may consolidate with and into a foreign credit union and a foreign credit union may consolidate with and into a credit union. In any such consolidation the credit union shall comply with the applicable provisions of this section.

SECTION 8. Said chapter 171 is hereby further amended by striking out section 80A and inserting in place thereof the following section:-

Section 80A. (a) A credit union subject to this section may convert into a federal credit union, a mutual savings bank governed by chapter 168, a mutual co-operative bank governed by chapter 170, a mutual federal savings bank or a mutual federal savings and loan association which exist under authority of the United States. A mutual savings bank governed by chapter 168 or a mutual co-operative bank governed by chapter 170 may convert into a credit union. If permissible under federal law, a mutual federal savings bank or a mutual federal savings and loan association may convert into a credit union. The conversion shall comply with all applicable federal laws and regulations. A credit union insured by the Massachusetts Credit Union Share Insurance Corporation shall file notification of its intent to convert with said corporation at least 90 days before the date of the proposed special meeting of the members of the credit union. A mutual savings bank insured by the Deposit Insurance Fund shall file notification of its intent to convert with said Fund at least 90 days before the date of the proposed special meeting of the incorporators of the mutual savings bank. A mutual co-operative bank insured by The Co-operative Central Bank shall file notification of its intent to convert with said Bank at least 90 days before the date of the proposed special meeting of the shareholders of the mutual co-operative bank. No credit union, mutual savings bank, or co-operative bank may convert pursuant to this section so long as any financial assistance provided by said corporation to such credit union, mutual savings bank, or co-operative bank remains unpaid or has not been compromised or settled. Any such repayment, compromise or settlement shall be approved by the commissioner.

(b) The converting institution shall file with the commissioner, at the same time, notices, disclosures and communications required by or sent to the National Credit Union Administration

or the Federal Deposit Insurance Corporation. The commissioner may require changes and additions to said notices, disclosures or communications, except as required by federal law or regulation.

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

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

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

(3) an estimated budget for conversion expenses;

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

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

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

(d) Included with the plan shall be an information statement to be sent to corporators, shareholders or members, as the case may be, of the converting institution which shall fully and

191 fairly disclose all significant terms and steps to be taken for the conversion and shall include but
192 not be limited to:

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

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

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

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

202 (5) in the case of a credit union converting to a bank charter, a disclosure of any
203 conversion related economic benefit a director or senior management official may receive
204 including receipt of or an increase in compensation and an explanation of any foreseeable stock
205 related benefits associated with a subsequent conversion to a stock institution; the explanation of
206 stock related benefits shall include a comparison of the opportunities to acquire stock that are
207 available to officials and employees, with those opportunities available to the general
208 membership.

209 (e) A converting institution shall file with the commissioner a plan of conversion and an
210 information statement at least 120 days before the date of the proposed special meeting of the
211 corporators, shareholders or members, as the case may be. The commissioner may require

reasonable changes to the plan of conversion and information statement. The commissioner may also require any equitable disclosure he determines applicable to the proposed conversion. The commissioner may specify the form, type and other material aspects of the plan of conversion and information statement to be sent to corporators, shareholders or members, as the case may be, except to the extent that it does not conflict with federal law or regulation.

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

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

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

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

(g) The commissioner shall render a decision within 30 days from the date of the filing of the plan or any amendment thereof. Upon authorization by the commissioner of the distribution of the contents of the conversion plan and information statement, the converting institution shall call a special meeting of the corporators, shareholders or members, as the case may be, to vote on the conversion plan. At least 30 days before the special meeting, the converting institution shall

mail to each corporator, shareholder or member, as the case may be, a notice of the special meeting, the conversion plan and information statement.

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

(i) A converting institution or an officer or director thereof shall not directly or indirectly give or offer or provide a chance to win a lottery or anything of substantial value, as determined by the commissioner, to a member or a director of the credit union, to a corporator or a trustee of a mutual savings bank or a shareholder or a director of a mutual co-operative bank for an action related to the conversion or as an inducement to vote on the plan of conversion.

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

(k) Certified copies of the results of the board of the converting institution and votes of the respective corporators, shareholders or members, as the case may be, shall be filed with the commissioner. The converting institution shall also certify that the information statement, plan,

and other written materials provided to corporators, shareholders or members were identical to those materials considered satisfactory by the commissioner.

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

(m) If the conversion to a mutual savings bank or a mutual co-operative bank is approved by the credit union members and the commissioner receives notification from the converting credit union that approvals required under state and federal law and regulations, including approvals needed for deposit insurance by the Federal Deposit Insurance Corporation have been obtained, and that any waiting period prescribed by federal law has expired, and in the case of conversion to a mutual savings bank, it will become a member of the Depositors Insurance Fund and of the deposit insurance fund thereof and has made all applicable payments thereto as determined by the commissioner, or in the case of conversion to a mutual co-operative bank it shall become a member of The Co-operative Central Bank and of the share insurance fund thereof and has made all applicable payments thereto as determined by the commissioner, a certificate to transact business shall be issued by the commissioner as applicable. A conversion to a state chartered savings bank or a state chartered co-operative bank under this section shall not be consummated until arrangements satisfactory to the Depositors Insurance Fund or The Co-operative Central Bank have been made and notice thereof has been received by the commissioner. After receipt of the certificate to transact business, the converting credit union shall promptly file the certificate and its articles of organization with the secretary of state. Upon the filing, the charter of the converting credit union shall automatically cease and the converting

279 credit union shall cease to be a credit union and shall become a mutual savings bank or a mutual
280 co-operative bank. Upon the conversion, the converted mutual bank shall possess all of the
281 rights, privileges and powers granted to it by its articles of organization and by the laws
282 applicable to the type of mutual bank charter into which it converted, and all of the assets and
283 business of the converting credit union shall be transferred to and vested in it without any deed
284 or instrument of conveyance; but the converting credit union may execute a deed or instrument
285 of conveyance as is convenient to confirm the transfer. The converted mutual bank shall be
286 subject to all of the duties, relations, obligations and liabilities of the converting credit union,
287 whether as debtor, depository or otherwise, and shall be liable to pay and discharge the debts and
288 liabilities, to perform all the duties in the same manner and to the same extent as if the converted
289 mutual bank had itself incurred the obligation or liability or assumed the duty or relation. Rights
290 of creditors of the converting credit union and liens upon the property of such credit union shall
291 be preserved unimpaired and the converted mutual bank shall be entitled to receive, accept,
292 collect, hold and enjoy all gifts, bequests, devises, conveyances and appointments in favor of or
293 in the name of the converting credit union and whether made or created to take effect before or
294 after the conversion.

295 If the conversion to a credit union is approved by the board of the converting mutual
296 bank, and its corporators or shareholders, and the commissioner receives notification from the
297 converting mutual bank that approvals required under state and federal law and regulations,
298 including approvals needed for insurance by the National Credit Union Administration have been
299 obtained, and that any waiting period prescribed by federal law has expired, and it will become a
300 member of the Massachusetts Credit Union Share Insurance Corporation and of the share
301 insurance fund thereof and has made all applicable payments thereto as determined by the

302 commissioner, a certificate to transact business shall be issued by the commissioner as
303 applicable. A conversion to a credit union under this section shall not be consummated until
304 arrangements satisfactory to the Massachusetts Credit Union Share Insurance Corporation have
305 been made and notice thereof has been received by the commissioner. After receipt of the
306 certificate to transact business, the converting mutual bank shall promptly file the certificate and
307 its articles of organization with the secretary of state. Upon the filing, the charter of the
308 converting mutual bank shall automatically cease and the converting mutual bank shall cease to
309 be a mutual bank and shall become a credit union. Upon the conversion, the converted credit
310 union shall possess all of the rights, privileges and powers granted to it by its articles of
311 organization and by the laws applicable to the type of credit union charter into which it
312 converted, and all of the assets and business of the converting mutual bank shall be transferred to
313 and vested in it without any deed or instrument of conveyance; but the converting mutual bank
314 may execute a deed or instrument of conveyance as is convenient to confirm the transfer. The
315 converted credit union shall be subject to all of the duties, relations, obligations and liabilities of
316 the converting mutual bank, whether as debtor, depository or otherwise, and shall be liable to pay
317 and discharge the debts and liabilities, to perform all the duties in the same manner and to the
318 same extent as if the converted credit union had itself incurred the obligation or liability or
319 assumed the duty or relation. Rights of creditors of the converting mutual bank and liens upon
320 the property of such mutual bank shall be preserved unimpaired and the converted credit union
321 shall be entitled to receive, accept, collect, hold and enjoy all gifts, bequests, devises,
322 conveyances and appointments in favor of or in the name of the converting mutual bank and
323 whether made or created to take effect before or after the conversion.

324 (n) If the conversion to a federal chartered institution is approved by the Board of the
325 converting institution and by the corporators, shareholders or members, as the case may be, the
326 converting institution shall provide notification to the commissioner that all approvals under state
327 and federal law and regulations including approvals needed for deposit insurance by the Federal
328 Deposit Insurance Corporation or the National Credit Union Administration have been obtained
329 and that any waiting period prescribed by federal law has expired and shall provide a certified
330 copy of the approval of the federal mutual charter by the appropriate regulatory agency of the
331 federal government. Upon acceptance of the federal charter, the converting institution's charter
332 from the commonwealth shall cease to exist.

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