

HOUSE No. 1049

The Commonwealth of Massachusetts

PRESENTED BY:

Paul McMurtry

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 banks and banking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>1/3/2019</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/3/2019</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>1/4/2019</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>1/9/2019</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>1/8/2019</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>1/22/2019</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>1/28/2019</i>

HOUSE No. 1049

The Commonwealth of Massachusetts

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

An Act relative to banks and banking.

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. Section 1 of chapter 44 of the acts of 1932, as most recently amended by
2 Section 20 of chapter 64 of the acts of 1999, is hereby amended by inserting the following
3 sentence after the first sentence:

4 “All the co-operative banks established under the laws of the commonwealth and subject
5 to the provisions of chapter one hundred and seventy of the General Laws shall also be members
6 of the corporation, and the term “member” shall mean each such savings bank and co-operative
7 bank.”

8 SECTION 2. The third sentence of section 1 of chapter 44 of the acts of 1932, as most
9 recently amended by section 20 of chapter 64 of the acts of 1999, is hereby stricken and the
10 following sentence inserted in its place:

11 “Any bank established under the authority of said chapters one hundred and sixty-eight
12 and one hundred and seventy shall upon its organization be a member bank, provided such bank

meets the membership qualification requirements of section 17B of chapter 43 of the acts 1934,
at all times.”

SECTION 3. Section 1 of chapter 44 of the acts of 1932, as most recently amended by
section 20 of chapter 64 of the acts of 1999, is hereby amended by inserting after the third
paragraph the following new paragraph:

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

SECTION 4. The first and second sentences of section 2 of chapter 44 of the acts of
1932, as most recently amended by Section 21 of chapter 64 of the acts of 1999, are hereby
stricken and the following sentence inserted in their place:

“The officers of the corporation shall be a president, one or more vice-presidents, a
treasurer, a clerk and such other officers as the by-laws may provide.”

SECTION 5. Section 2 of chapter 44 of the acts of 1932, as most recently amended by
Section 21 of chapter 64 of the acts of 1999, is further amended by adding the following new
paragraph after the last paragraph:

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

34

35 SECTION 6. Clause (e) of section 7 of chapter 44 of the acts of 1932, as most recently
36 amended by section 77 of chapter 371 of the acts of 1983, is hereby stricken and the following
37 inserted in its place:- “(e) Deposits in federally insured banks.”

38 SECTION 7. Section 8 of chapter 44 of the acts of 1932, as most recently amended by
39 section 9 of chapter 405 of the acts of 1985, is hereby amended by adding after the words
40 “savings banks” the words “and co-operative banks.”

41 SECTION 8. The first paragraph of section 10 of chapter 44 of the acts of 1932, as
42 most recently amended by section 3 of chapter 178 of the acts of 1987, is hereby amended by
43 inserting in the first sentence after the word “agents” the following text: “and the directors,
44 officers, employees and other agents of The Co-operative Central Bank organized pursuant to
45 chapter 45 of the acts of 1932, as amended,”.

46 SECTION 9. The third paragraph of section 10 of chapter 44 of the acts of 1932, as
47 most recently amended by section 3 of chapter 178 of the acts of 1987, is hereby amended by
48 inserting in the first sentence after the words “or other agents of the corporation” the following
49 text: “or The Co-operative Central Bank organized pursuant to chapter 45 of the acts of 1932, as
50 amended,”.

51 SECTION 10. The first paragraph of section 1 of chapter 43 of the acts of 1934, as most
52 recently amended by section 24 of chapter 64 of the acts of 1999, is hereby amended by inserting
53 the words “and co-operative banks” after the words “savings banks” in the first sentence thereof.

SECTION 11. The first paragraph of section 1A of chapter 43 of the acts of 1934, as most recently amended by section 12C of chapter 405 of the acts of 1985, is hereby amended by striking out the words “section twenty-five of chapter one hundred and sixty eight” and inserting in place thereof the following words “section twelve of chapter one hundred and sixty-seven J.”

SECTION 12. The fifth sentence of Section 3 of the chapter 43 of the acts of 1934, as most recently amended by section 33 of chapter 238 of the acts of 1996, is hereby amended by striking out the words “savings” before “bank” and inserting in place thereof the word “member;” striking out the words “thirty-four or section thirty-four D of said chapter one hundred sixty-eight” and inserting in place thereof “two, three or five of said chapter one hundred sixty-seven I;” and, striking out the words “thirty-five of said chapter one hundred sixty-eight” and inserting in place thereof the words “eight of said chapter one hundred sixty-seven I.”

SECTION 13. The third paragraph of section 3A of chapter 43 of the acts of 1934, as most recently amended by sections 85 and 86 of chapter 371 of the acts of 1983, is hereby amended by inserting the words “directors or” before the word “trustees.”

SECTION 14. The fourth paragraph of Section 3A of chapter 43 of the acts of 1934, as most recently amended by sections 85 and 86 of chapter 371 of the acts of 1983, are hereby amended by striking out the words “savings” before “bank” and inserting in place thereof the words “member;” inserting the words “directors or” before the word “trustee;” striking out the words “thirty-three of chapter one hundred and sixty-eight” and inserting in place thereof the words “fifteen of chapter sixty-seven I”; and, striking out the words “thirty-five of said chapter

one hundred and sixty-eight” and inserting in place thereof the words “eight of said chapter one hundred and sixty-seven I.”

SECTION 15. Section 6 of chapter 43 of the acts of 1934, as most recently amended by section 234 of chapter 514 of the acts of 1978, is hereby amended by inserting in the sixth sentence the words “directors or” before the word “trustees”.

SECTION 16. Section 7 of chapter 43 of the acts of 1934, as most recently amended by section 87 of chapter 371 of the acts of 1983, is hereby amended by inserting the words “or shareholders” after the word “corporators” and by striking the words” thirty-four, thirty-four A, thirty-four B, thirty-four D and thirty-five of chapter one hundred and sixty-eight” and inserting in their place the words” two, three and five of chapter one hundred and sixty-seven I.”

SECTION 17. Section 10 of chapter 43 of the acts of 1934, as most recently amended by section 25 of chapter 64 of the acts of 1999, is hereby amended by striking the remainder of the seventh sentence after the word “distribution” and inserting the following sentence after the end of the seventh sentence:

“Distributions shall be based upon the member banks’ respective liquidation rights in the Deposit Insurance Fund and the Share Insurance Fund of The Co-operative Central Bank as of the effective date of the transfer of the Share Insurance Fund into the Depositors Insurance Fund adjusted for any pro-rata post-transfer changes in the surplus account of the Deposit Insurance Fund based upon paid in assessments; provided, however, that the liquidation rights of co-operative bank members shall be reduced to reflect any contingent liability that is incurred by the corporation as a direct result of the merger of the two corporations pursuant to section 20 of this act within three years from the effective date of said merger.”

SECTION 18. Section 17 of chapter 43 of the acts of 1934, as most recently amended by section 20, of chapter 64 of the acts of 1999, is further amended by adding the following sentence to the fourth paragraph of paragraph (a) of said section:

“The corporation, with the approval of the commissioner, may in its sole discretion, settle or compromise the distribution rights under section 10 of a member bank that has withdrawn pursuant to section 17A.”

SECTION 19. Chapter 43 of the acts of 1934, as most recently amended by chapter 64 of the acts of 1999, is further amended by adding the following new section after section 17A:

“Section 17B. A member bank shall at all times meet the membership qualification requirements prescribed by the corporation’s by-laws adopted pursuant to section 2 of chapter 44 of the acts of 1932, as amended.

Whenever the corporation, by at least a two-thirds vote of the full membership of its board of directors, determines that a member bank is unlikely to meet the membership qualification requirements of the corporation’s by-laws, it shall inform the commissioner of such determination and the basis therefor. If the commissioner concurs in such determination, the directors may require such member bank to bring itself into compliance with such membership qualification requirements by: (i) restructuring its balance sheet; or (ii) taking such other actions as the directors deem appropriate. The terms and conditions of any such required actions shall become effective when approved by the commissioner.

Whenever the directors determine that a member bank is unlikely to meet the membership qualification requirements of the corporation’s by-laws, the directors shall notify such bank in writing thereof, including an explanation of the basis for said determination, and

advise said bank of any of the requirements imposed pursuant to the preceding paragraph. In any such event, said member bank shall either comply therewith within 60 days following such written notification or notwithstanding any general or special law to the contrary, a member bank, which is not a savings bank so notified, shall by operation of law, become a savings bank subject to the provisions of chapter 168 of the General Laws at the end of such 60-day period.

The corporation may make rules and establish procedures for making membership qualification determinations under this section.

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

142 name as a savings bank, and any judgment, order or decree may be rendered for or against it
143 which might have been rendered for or against such converting bank theretofore involved in such
144 judicial proceedings.

145 After compliance with the foregoing requirements, the succeeding corporation shall
146 thereafter be entitled to exercise all of the rights and privileges, and shall be subject to all of the
147 duties and obligations of, a savings bank, and shall conduct its business subject to the provisions
148 of chapter 168 of the General Laws and of other applicable laws; provided, however, that, with
149 the approval of the commissioner, the succeeding corporation shall have a reasonable time after
150 the effective date of the conversion within which to comply with any particular provisions of
151 such laws not hereinbefore specifically provided for and which it shall be unable to comply with
152 on or before said date.”

153 SECTION 20. (1) The Co-operative Central Bank, a corporation established by chapter
154 45 of the acts of 1932, may merge with and into the corporation, under the name of the
155 corporation, pursuant to an agreement and plan of merger which shall have been approved by a
156 two-thirds vote of the boards of directors of each of The Co-operative Central Bank and the
157 corporation. Said agreement and plan of merger shall establish the terms and conditions of said
158 merger, in addition to those terms and conditions set forth in this section, which shall include
159 membership qualification requirements to be incorporated into the corporation’s by-laws,
160 effective as of the consummation of any such merger, and any other provisions the corporation
161 deems appropriate to effectuate the provisions of this act.

162 Upon receipt of the required approval of the directors of both corporations,
163 articles of merger and the surviving corporation’s amended by-laws shall be filed with the

commissioner, which shall state: (i) the Depositors Insurance Fund as the surviving corporation; and (ii) the effective date of the merger determined pursuant to the agreement or plan of merger. Such articles of merger shall be signed by the president and the clerk of each corporation, who shall state under the penalties of perjury that the plan or agreement of merger has been duly executed on behalf of such corporation and has been approved by the directors as required.

(2) No such merger shall occur until the merger and restated by-laws of the surviving corporation are approved in writing by the commissioner under such terms and conditions as he may impose. Upon his approval of the merger and the amended by-laws, the commissioner shall endorse his approval upon said articles of merger.

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

(4) The Co-operative Central Bank's obligations and liabilities to any member, creditor, or other person, as of the effective date of the merger, shall remain unimpaired and the Depositors Insurance Fund shall, by operation of law, succeed to all such obligations and liabilities, as though it had itself incurred the obligation or liability; and its liabilities and obligations to creditors, existing for any cause whatsoever, shall not be impaired by the merger;

nor shall any obligation or liability of any member in The Co-operative Central Bank or Depositors Insurance Fund, be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as the same existed before the merger.

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

SECTION 21: Notwithstanding any general or special law to the contrary, a co-operative bank that does not meet the corporation's membership qualification requirements, as of the effective date of the merger authorized under section 20 of this act, shall immediately be converted into a savings bank under section 17B of chapter 43 of the acts 1934, without any further action by the corporation or the commissioner as of the effective date of said merger.

SECTION 22: Notwithstanding the provisions of section 2 of chapter 44 of the acts of 1932, as most recently amended by section 21 of chapter 64 of the acts of 1999, for a period of three years after the effective date of this act, the by-laws of the Depositors Insurance Fund may provide for a number of directors greater than twelve and may impose term limits in order to effectuate the purposes of this act.

206 SECTION 23: Chapter 45 of the acts of 1932, as amended, and chapter 73 of the acts of
207 1934, as amended, are hereby repealed upon the commissioner's approval of the articles of
208 merger under section 20 of this act.