

HOUSE No. 1052

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:	DATE ADDED:
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>2/18/2021</i>

HOUSE No. 1052

By Mr. Cahill of Lynn, a petition (accompanied by bill, House, No. 1052) of Daniel Cahill relative to banking laws and related statutes. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2018 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 so appearing hereby amended by
17 striking out section 22 and inserting in place thereof the following section:–

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

32 SECTION 4. Section 4 of Chapter 40G of the General Laws as so appearing, is hereby
33 amended by striking out the second paragraph and inserting in place thereof the following
34 paragraph:–

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

42 SECTION 5. Section 55 of Chapter 44 of the General Laws, as so appearing, is hereby
43 amended by striking out, in lines 25 and 26, the words “banking companies or co-operative
44 banks” and inserting the words:–

45 or cooperative banks or in accordance with the provisions of the second paragraph of
46 section 55B of this chapter.

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

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

57 SECTION 7. The General Laws are hereby amended by inserting after chapter 110F the
58 following chapter:-

59 CHAPTER 110I. UNIFORM REAL PROPERTY ELECTRONIC RECORDINGS

60 Section 1. SHORT TITLE. This act may be cited as the Uniform Real Property
61 Electronic Recording Act

62 Section 2. For the purpose of this Act the following words shall, unless the context
63 clearly indicates otherwise, have the following meanings:-

64 “Document” means information that is:

65 (A) inscribed on a tangible medium or that is stored in an electronic or other medium and
66 is retrievable in perceivable form; and

67 (B) eligible to be recorded in the land records maintained by the registrar.

68 “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
69 optical, electromagnetic, or similar capabilities.

70 “Electronic document” means a document that is received by the registrar in an electronic
71 form.

72 “Electronic signature” means an electronic sound, symbol, or process attached to or
73 logically associated with a document and executed or adopted by a person with the intent to sign
74 the document.

75 “Person” means an individual, corporation, business trust, estate, trust, partnership,
76 limited liability company, association, joint venture, public corporation, government, or
77 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

78 “State” means a state of the United States, the District of Columbia, Puerto Rico, the
79 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
80 the United States.

81 Section 3. VALIDITY OF ELECTRONIC DOCUMENTS.

82 (a) If a law requires, as a condition for recording, that a document be an original, be on
83 paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic
84 document satisfying this act.

85 (b) If a law requires, as a condition for recording, that a document be signed, the
86 requirement is satisfied by an electronic signature.

87 (c) A requirement that a document or a signature associated with a document be
88 notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic
89 signature of the person authorized to perform that act, and all other information required to be
90 included, is attached to or logically associated with the document or signature. A physical or
91 electronic image of a stamp, impression, or seal need not accompany an electronic signature.

92 Section 4. RECORDING OF DOCUMENTS.

93 (a) In this section, paper document means a document that is received by the registrar in
94 a form that is not electronic.

95 (b) A registrar:

96 1. who implements any of the functions listed in this section shall do so in compliance
97 with standards established by the Secretary of State.

98 2. may receive, index, store, archive, and transmit electronic documents.

99 3. may provide for access to, and for search and retrieval of, documents and information
100 by electronic means.

101

102 4. who accepts electronic documents for recording shall continue to accept paper
103 documents as authorized by state law and shall place entries for both types of documents in the
104 same index.

105 5. may convert paper documents accepted for recording into electronic form.

106

107 6. may convert into electronic form information recorded before the registrar began to
108 record electronic documents.

109 7. may accept electronically any fee or tax that the registrar is authorized to collect.

110

111 8. may agree with other officials of a state or a political subdivision thereof, or of the
112 United States, on procedures or processes to facilitate the electronic satisfaction of prior
113 approvals and conditions precedent to recording and the electronic payment of fees and taxes.

114 Section 5. ADMINISTRATION AND STANDARDS.

115 (a) The Secretary of State shall adopt standards to implement this act.

116 (b) To keep the standards and practices of registrars in this state in harmony with the
117 standards and practices of recording offices in other jurisdictions that enact substantially this act
118 and to keep the technology used by registrars in this state compatible with technology used by
119 recording offices in other jurisdictions that enact substantially this act, the Secretary of State, so
120 far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending,
121 and repealing standards shall consider:

122 1) standards and practices of other jurisdictions;

123 2) the most recent standards promulgated by national standard-setting bodies, such as the
124 Property Records Industry Association;

125 3) the views of interested persons and governmental officials and entities; and

126 4) the needs of counties of varying size, population, and resources.

127 Section 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying
128 and construing this Uniform Act, consideration must be given to the need to promote uniformity
129 of the law with respect to its subject matter among states that enact it.

130 Section 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
131 NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal
132 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)
133 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
134 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
135 U.S.C. Section 7003(b)).

136 SECTION 8. Section 21 of chapter 167 of the General Laws, as so appearing, is hereby
137 amended by adding the following three paragraphs:-

138 Notwithstanding any general law, special act or its organizational documents to the
139 contrary, a financial institution may postpone the annual meeting of its voting body if the
140 Governor has declared a state of emergency for the Commonwealth or the area or areas served
141 by the financial institution. Within sixty days of the termination of the state of emergency the
142 financial institution shall hold an annual meeting postponed under this paragraph unless the next
143 regularly scheduled annual meeting is to be held within one hundred and fifty days of such
144 termination. A postponed annual meeting may be combined with the next annual meeting held
145 within this time period. If notice of the annual meeting has been provided as of the date of the
146 declaration or within ten days after a financial institution may provide notice of the
147 postponement by press release, email notice if previously provide to the financial institution or
148 take other reasonable steps to inform the voting body. During the period of the emergency the
149 financial institution shall retain its current governing body regardless of the expiration of terms
150 or mandatory retirements; may operate under existing policies and procedures and any required
151 annual votes or actions shall also be postponed. The termination or rescission of the state of
152 emergency shall not invalidate any actions taken pursuant to the provisions of this paragraph. . A
153 financial institution postponing an annual meeting under this paragraph shall enter in the records
154 of the next following meeting of its governing body the cause, timing and procedures taken for
155 such action.

156 Notwithstanding any general law, special act or its organizational documents to the
157 contrary, a financial institution may hold its annual meeting in a virtual or hybrid manner if the
158 Governor has declared a state of emergency in the Commonwealth or in the area or areas served

159 by the financial institution provided that the voting body is able to participate in the meeting,
160 including being able to present questions, telephonically among other options for accessing the
161 meeting. Notice of the meeting shall be in accordance with the law and by-laws of the financial
162 institution and provide all other information for participating by remote communication. A
163 financial institution acting under the authority of this paragraph shall take reasonable steps to
164 verify the attendees that join through a remote communication method and take reasonable steps
165 to provide technical assistance during the meeting for those attending through remote
166 communication. The termination or rescission of the state of emergency shall not invalidate any
167 actions taken pursuant to the provisions of this paragraph. A special meeting of the financial
168 institution may also be conducted under the authority and requirements of this paragraph. A
169 financial institution conducting an annual meeting or special meeting under this paragraph shall
170 enter in the records of the next following meeting of its governing body the cause for such action
171 and the timing and manner in which the meeting was held. An annual or special meeting held
172 under the provisions of this paragraph shall follow all existing health and safety protocols for the
173 state of emergency and any specified time period thereafter.

174 The following words shall have the following meanings for the preceding two
175 paragraphs, unless the context clearly requires otherwise:-

176 “Financial institution”, includes a savings or co-operative bank in mutual form, a mutual
177 holding company and its subsidiary banking institution, and a bank in stock form.

178 “Governing body”, the board of directors, the board of trustees or the board of investment
179 of investment as applicable to the financial institution

180 “Hybrid meeting”, a meeting held with a combination of limited in-person attendance and
181 remote communication.

182 “Organizational documents”, the charter, articles of organization, and by-laws of a
183 financial institution

184 “Remote communication”, the use of telephonic, videoconferencing or other means of
185 participation without being in physical attendance.

186 “Virtual meeting”, a meeting held solely by remote communication.

187 “Voting body”, the incorporators of a mutual bank or a mutual holding company, the
188 shareholders of a co-operative bank in mutual form, and the stockholders of a bank in stock form
189 with the right to vote at the annual meeting.

190 SECTION 9. Section 37 of said chapter 167, as so appearing, is hereby amended by
191 striking out the second, third, fourth and fifth paragraphs and inserting in place thereof the
192 following 4 paragraphs:-

193 Notwithstanding any general or special law to the contrary, a person, domestic or foreign
194 corporation, partnership, association, limited liability company, business trust, joint venture,
195 societies, or similar entity shall not use the name, trade name or trademark of any bank, federal
196 bank, federal branch, foreign bank, out-of-state bank or out-of-state branch or out-of-state federal
197 bank, as defined in section 1, or any federal credit union as defined in section 1 of chapter 171,
198 or any subsidiary thereof, in any advertisement or solicitation for products or services, without
199 the express written consent of the financial institution.

200 For the purposes of this section, the word “advertisement” or “solicitation” shall mean a
201 communication including but not limited to a writing, email, text message, direct mail, oral
202 solicitation, internet website, letter, brochures, pamphlets displays sales literature and any other
203 form of electronic communication to a specifically identified consumer or which contains
204 specific information on the account or loan of a specifically identified consumer. The word
205 “electronic” shall mean relating to technology having electrical, digital, magnetic, wireless,
206 optical, electromagnetic or similar capabilities.

207 A person, domestic or foreign corporation, partnership, association, limited liability
208 company, business trust, joint venture, societies, or similar entity shall not make reference to an
209 existing bank, federal bank, federal branch, foreign bank, out-of-state bank, out-of-state branch,
210 out-of-state federal bank as defined in section 1 of this chapter, or federal credit union as defined
211 in section 1 of chapter 171, or any subsidiary thereof, without the express written consent of the
212 bank, federal bank, federal branch, foreign bank, out-of-state bank, out-of-state branch, out-of-
213 state federal bank or federal credit union, or any subsidiary thereof, or make reference to a loan
214 number, loan amount or other specific loan information on the outside of an envelope, visible
215 through the envelope window, or on a postcard in connection with any advertisement or
216 solicitation for products or services to a specifically identified consumer.

217 A person, domestic or foreign corporation, partnership, association, limited liability
218 company, business trust, joint venture, societies, or similar entity shall not include a loan
219 number, loan amount or other specific loan information relative to a specifically identified
220 consumer that is publicly available in a advertisement or solicitation for the purchase of products
221 or services unless the solicitation clearly and conspicuously states in bold-face type on the front
222 page of the correspondence that the person, domestic or foreign corporation, partnership,

223 association, limited liability company business trust, joint venture, societies or similar entity is
224 not sponsored by or affiliated with and that the advertisement or solicitation is not authorized by
225 the bank, federal bank, federal branch, foreign bank, out-of-state bank, out-of-state branch, out-
226 of-state federal bank as defined in section 1, or federal credit union as defined in section 1 of
227 chapter 171, or any subsidiary thereof. The statement shall include the name, address and the
228 telephone number of the person making the advertisement or solicitation and that any loan
229 information referenced was not provided by the bank, federal bank, federal branch, foreign bank,
230 out-of-state bank, out-of-state branch, out-of-state federal bank or federal credit union, or any
231 subsidiary thereof. The statements required in this paragraph shall also be given at the time of
232 any oral solicitation to a specifically identified consumer.

233 A person, domestic or foreign corporation, partnership, association, limited liability
234 company, association, business trust, joint venture, societies or similar entity, which is
235 considered to have violated this section, shall be considered to have engaged in an unfair and
236 deceptive practice and shall be a violation of chapter 93A.

237 SECTION 10. Said chapter 167, as so appearing, is hereby amended by adding the
238 following section:-

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

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

244 1) Making and servicing loans

- 245 2) Opening new accounts
- 246 3) Processing cash deposits and withdrawals
- 247 4) Processing payments and checks
- 248 5) Managing customer accounts.
- 249 6) Maintaining records for all the bank’s transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

285 SECTION 12. The second paragraph of section 19 of chapter 170, as so appearing, is
286 hereby amended by striking out the second sentence and inserting in place thereof the following
287 sentence:-

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

290 SECTION 13. Section 9A of Chapter 172 is hereby amended by inserting after the ninth
291 paragraph the following paragraph:- A limited purpose trust company may be organized as, or
292 converted into, a corporation, a limited liability company, or any other form of legal entity
293 subject to Chapter 172 and to terms and conditions imposed by the commissioner.

294 SECTION 14. The second paragraph of section 13 of said chapter 172, as so appearing, is
295 hereby amended by striking out the second sentence and inserting in place thereof the following
296 sentence:-

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

299 SECTION 15. Section 2 of chapter 183C of the General Laws, as so appearing, is hereby
300 amended by striking out the definition of “High cost home mortgage loan” and inserting in place
301 thereof the following definition:- “High cost home mortgage loan”, a consumer credit
302 transaction that is secured by the borrower’s principal dwelling, other than a reverse mortgage
303 transaction, with an annual percentage rate or fees which exceed the limitations set pursuant to

304 regulations issued by the Commissioner of Banks which shall be no less protective than
305 limitations set forth at 12 CFR 1026.32(a)(1).

306 SECTION 16. Said chapter 183C, as so appearing, is hereby further amended by striking
307 out section 3 and inserting in place thereof the following section:–

308 Section 3. A creditor may not make a high-cost home mortgage loan without first
309 receiving certification from a counselor in accordance with the requirements pursuant to 209
310 CMR 32.34(1) or 12 CFR 1026.34(a)(5). A high cost home mortgage loan originated by a lender
311 in violation of this section shall not be enforceable.

312 SECTION 17. Section 4 of said chapter 183C, as so appearing, is hereby amended by
313 striking out the second paragraph and inserting in place thereof the following paragraph:– There
314 shall be a presumption that the borrower is able to make the scheduled payments if, at the time
315 the loan is made, the lender has complied with 209 CMR 32.43 or 12 CFR 1026.43 in
316 determining the borrower’s ability to repay.

317 SECTION 18. Section 6 of said chapter 183C, as so appearing, is hereby amended by
318 striking out, in lines 2 and 3, the following words:– “greater than 5 per cent of the total loan
319 amount or \$800, whichever is greater”.

320 SECTION 19. Section 7 shall take effect on January 1, 2023.