

HOUSE No. 3775

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act updating certain banking laws..

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.

2 Section 19 of chapter 167D, as appearing in the 2008 Official Edition, is hereby amended
3 by striking out said section and inserting in place thereof:

4 Whenever a bank as a consequence of a default of a debt owed to said bank by a
5 depositor or shareholder, makes a transfer of funds of such depositor or shareholder to reduce or
6 extinguish said debt, such depositor or shareholder shall be notified forthwith of such transfer by
7 written notice sent by first class mail, directed to his last known address; provided, however, that
8 no such transfer shall be made if such debt is the result of consumer credit granted under the
9 provisions of chapter one hundred and forty D unless the written notice required by section
10 twenty-three of said chapter one hundred and forty D has been given. A depositor or shareholder
11 to whom such notice has not been sent shall be entitled to recover the amount of any actual
12 damages.

13 SECTION 2:

14 Section 9 of Chapter 168 is amended by inserting after the second paragraph, the
15 following:

16 No person shall continue to be a corporator, if such corporator was a trustee of the bank
17 and was removed from office by the trustees for a breach of responsibility as provided in section
18 10 of this chapter.

19 SECTION 3:

20 Section 14 of Chapter 168, as so appearing is hereby amended by striking out said section
21 and inserting in place thereof the following:

22 The president, clerk of the corporation and such members of the board of trustees as may
23 be required to be elected under the provisions of section ten shall be elected at the annual
24 meeting or a special meeting of the corporators. If any such office becomes vacant between
25 meetings of the corporators, during the year the trustees may, except as otherwise provided in
26 this chapter, fill the vacancy or appoint a new officer until the next annual meeting.

27 The members of the board of investment, the treasurer, vice treasurer, assistant treasurers,
28 vice presidents, and such other officers as may be determined to be necessary as provided in
29 section thirteen, shall be elected by the trustees and shall hold office during their pleasure, and
30 the trustees may fill vacancies in such offices at any time.

31 All trustees and other officers shall be sworn, and shall hold their several offices until
32 others are elected and qualified in their stead; and a record of such qualification shall be made
33 and preserved with the records of such corporation. If a person elected as trustee or other officer
34 of such corporation does not, within forty-five days thereafter, take the oath of office, his office

35 thereupon shall become vacant; provided, that such oath may be taken in person at any office of
36 such corporation or may be taken in writing before a notary public or justice of the peace and
37 transmitted to such corporation within said period.

38 SECTION 4

39 Section 19 of Chapter 168, as so appearing is hereby amended by striking out the first
40 paragraph and inserting in place thereof:

41 An officer or director of a bank, except as provided in this section, shall not borrow from
42 or otherwise become indebted to the bank of which he is an officer or director and a bank, except
43 as provided in this section, shall not make a loan or extend credit in any other manner to any of
44 its officers or directors. With the prior approval of a majority of the entire board of directors or
45 the security committee excluding any member of that board or committee involved in the loan or
46 extension of credit, a bank may make a loan or extend credit to the officer and the officer may
47 become indebted to the bank in an amount not exceeding \$100,000 on a loan or extension of
48 credit, secured or unsecured, and in an amount not exceeding \$200,000 on a loan or extension of
49 credit intended or secured for educational purposes, and in an amount not exceeding \$750,000 on
50 a loan secured by a mortgage on real estate improved with a 1 to 4 family dwelling or a
51 condominium established in accordance with chapter 183A which is to be occupied, in whole or
52 in part, by the officer, and in an amount secured by a deposit account of the officer in the bank.
53 A bank may make a loan or extension of credit to the director, who is not an officer of such bank,
54 subject to the limitations contained in chapter 167E. The bank shall not give a preferential rate of
55 interest or other preferential terms on any loan or extension of credit to an officer or director. For
56 the purposes of this section, the term "officer" shall mean a president, executive vice-president,

57 senior vice-president or treasurer, and any other officer who participates in major policy
58 functions of the bank whether or not: (1) the other officer has an official title; but the term shall
59 not include a person who may have an official title and may exercise a certain measure of
60 discretion in the performance of his duties, including discretion in the making of loans, but who
61 does not participate in the determination of major policies of the bank and whose decisions are
62 limited by policy standards fixed by the senior management of the bank; (2) the title designates
63 the officer an assistant; or (3) the officer is serving without salary or compensation.

64 SECTION 5

65 Section 20 of Chapter 168, as so appearing, is hereby amended by striking out the second
66 paragraph and inserting in place thereof:

67 The report to the commissioner shall consist of, but not be limited to, the following: (1)
68 the name of the officer as defined in section 19, director, trustee or principal shareholder of said
69 corporation, bank holding company or other subsidiary to whom any such loan or extension of
70 credit has been given or the name of such company to which such loan or extension of credit has
71 been made, (2) the original amount of the loan and the interest rate thereon, (3) the date of the
72 loan, (4) the type of loan, (5) if the loan is secured in any manner, the type of secured asset and
73 its valuation, (6) the terms of the payment, (7) the current balance, and (8) the amount of
74 principal or interest payments in default, if any, and the length of the default.

75 SECTION 6

76 Section 38 of Chapter 168, as so appearing, is hereby amended by striking out the second
77 paragraph and inserting in place thereof:

78 Copies of the minutes of the proceedings of such meeting of members or trustees verified
79 by the affidavit of the secretary or an assistant secretary or clerk shall be filed in the office of the
80 commissioner and mailed to the Office of the Comptroller of the Currency within ten days after
81 such meeting. Such verified copies of the proceedings of the meeting when so filed shall be
82 presumptive evidence of the holding and action of such meeting. At the meeting at which
83 conversion is voted upon, the members or trustees shall also vote upon the persons who shall be
84 the incorporators and trustees of the state-chartered savings bank after conversion takes effect.

85 SECTION 7:

86 Section 19 of Chapter 170, as so appearing is hereby amended by striking the fourth
87 paragraph and inserting in place thereof:

88 Said report to the commissioner shall consist of, but not be limited to, (a) the name of the
89 officer, director, trustee or principal shareholder of said corporation, bank holding company or
90 other subsidiary to whom any such loan or extension of credit has been made or the name of such
91 company to which any such loan or extension of credit has been made, (b) the original amount of
92 the loan and the interest rate thereon, (c) the date of the loan, (d) the type of loan, (e) if the loan
93 is secured in any manner, the type of secured asset and its valuation, (f) the terms of the
94 payment, (g) the current balance, and (h) the amount of principal or interest payments in default,
95 if any, and the length of any such default.

96 SECTION 8:

97 Section 29 of Chapter 170, as so appearing, is hereby amended by striking out the first
98 paragraph and inserting in place thereof:

99 Any federal savings and loan association may convert itself into a co-operative bank
100 upon the same terms and conditions that from time to time shall apply under federal law and
101 regulations to the conversion of a co-operative bank to such an association; provided, however,
102 that where authority is conferred upon the Office of the Comptroller of the Currency, in the case
103 of a conversion from a co-operative bank to an association, similar authority, in the case of a
104 conversion from such an association to a co-operative bank, unless expressly provided in this
105 section is hereby conferred upon the board of bank incorporation.

106 SECTION 9

107 Section 13 of Chapter 172, as so appearing, is hereby amended by striking out the second
108 paragraph and inserting in place thereof:

109 Each director shall own, in his own right and free of any lien or encumbrance, common
110 stock, either of such corporation or of a company owning seventy-five per cent of the stock of
111 such corporation, having a par value, or a fair market value on the date the person became a
112 director, of not less than one thousand dollars. Any director who ceases to be the owner of the
113 required number of shares of stock, or who becomes in any other manner disqualified, shall
114 vacate his office forthwith. Each director, when appointed or elected, shall take an oath that he
115 will faithfully perform the duties of his office and that he is the owner, in his own right and free
116 of any lien or encumbrance, of the amount of stock required by this section. The oath shall be
117 taken before a notary public or justice of the peace, and a record of the oath shall be made a part
118 of the records of such corporation.

119 SECTION 10:

120 Section 18 of Chapter 172, as so appearing is hereby amended by striking the fourth
121 paragraph and inserting in place thereof:

122 An officer or director of a trust company, except as provided in this section, shall not
123 borrow from or otherwise become indebted to a trust company of which he is an officer or
124 director, and a trust company, except as provided in this section, shall not make a loan or extend
125 credit in any other manner to any of its officers or directors. With the prior approval of a
126 majority of the entire board of directors, or the executive committee excluding a member of that
127 board or committee involved in the loan or extension of credit, a trust company may loan or
128 extend credit to an officer and the officer may become indebted to the trust company in an
129 amount not exceeding \$100,000 on a loan or extension of credit, secured or unsecured, and in an
130 amount not exceeding \$200,000 on a loan or extension of credit intended or secured for
131 educational purposes, and in an amount not exceeding \$750,000 on a loan secured by a mortgage
132 on real estate improved with a 1 to 4 family dwelling or a condominium established in
133 accordance with chapter 183A which is to be occupied, in whole or in part, by the officer. A trust
134 company may make a loan or extension of credit to a director, who is not an officer of the trust
135 company, subject to the limitations contained in chapter 167E. The trust company shall not give
136 a preferential rate of interest or other preferential terms on a loan or extension of credit to an
137 officer or to a director. For the purposes of this section, the term "officer" shall mean a president,
138 executive vice-president, senior vice-president or treasurer, and any other officer who
139 participates in major policy functions of the trust company whether or not: (1) such other officer
140 has an official title; but the term shall not include a person who may have an official title and
141 may exercise a certain measure of discretion in the performance of his duties, including
142 discretion in the making of loans, but who does not participate in the determination of major

143 policies of the trust company and whose decisions are limited by policy standards fixed by the
144 senior management of the trust company; (2) the title designates the officer an assistant; or (3)
145 the officer is serving without salary or compensation.

146 SECTION 11:

147 Section 18 of Chapter 172, as so appearing is hereby further amended by striking the
148 fourth paragraph and inserting in place thereof:

149 Said report to the commissioner shall consist of, but not be limited to, the following: (a)
150 the name of the officer, director, trustee or principal shareholder of said trust company, bank
151 holding company or other subsidiary to whom any loan or extension of credit has been made or
152 the name of such company to which any such loan or extension of credit has been made, (b) the
153 original amount of the loan and the interest rate thereon, (c) the date of the loan, (d) the type of
154 loan, (e) if the loan is secured in any manner, the type of secured asset and its valuation, (f) the
155 terms of the payment, (g) the current balance, and (h) the amount of principal or interest
156 payments in default, if any, and the length of such default.

157 SECTION 12:

158 Section 36 of Chapter 172 is hereby amended by striking out said section and inserting in
159 place thereof:

160 Section 36. A. With the written approval of the commissioner:

161 (1) any trust company, any banking company, or any national banking association
162 engaged in the business of banking in the commonwealth may, upon compliance with the
163 provisions of section seventy-eight of chapter one hundred and fifty-six B, which are hereby

164 made applicable in all such cases, and subject, as to any such trust company or banking
165 company, to the provisions of section eighty-five of chapter one hundred and fifty-six B as
166 modified for the purposes of this section by the provisions hereof, consolidate or merge into any
167 trust company. A request for approval by the commissioner of such a consolidation or merger
168 shall be accompanied by an investigation fee, the amount of which shall be determined annually
169 by the commissioner of administration under the provision of section three B of chapter seven.

170 (2) any trust company or banking company may, subject to the provisions of sections
171 seventy-five and seventy-six of chapter one hundred and fifty-six B as modified for the purpose
172 of this section by the provisions hereof, or any such national banking association may sell or
173 exchange all or substantially all of its property and assets to or with any trust company, and any
174 trust company may purchase all or substantially all of the assets of any trust company or any
175 banking company of any such national banking association. A request for approval by the
176 commissioner pursuant to this clause shall be accompanied by an investigation fee, the amount
177 of which shall be determined annually by the commissioner of administration under the
178 provision of section three B of chapter seven.

179 (3) by vote, at a meeting duly called for the purpose, of two-thirds of each class of its
180 stock outstanding and entitled to vote and upon execution by a majority of its directors in form
181 satisfactory to the commissioner of an agreement of association, an organization certificate and
182 such other instruments as the commissioner shall prescribe, any federally chartered stock
183 corporation having an unimpaired capital stock sufficient in value or amount to satisfy the
184 provisions of section five may, upon approval by the board of bank incorporation, be converted
185 into a state-chartered stock corporation and shall not, in connection with or upon such
186 conversion, be subject to the requirements of this chapter with respect to the organization and

187 commencement of business of trust companies, the requirements of chapter one hundred and
188 sixty-eight with respect to the organization and commencement of business of savings banks, or
189 the requirements of chapter one hundred and seventy with respect to the organization and
190 commencement of business of cooperative banks, as applicable; provided, however, that such
191 conversion shall not be in contravention of the laws of the United States; and provided, further,
192 that any such conversion into a state-chartered savings bank shall be subject to applicable
193 provisions of section thirty-eight of chapter one hundred and sixty-eight, and any such
194 conversion into a state-chartered cooperative bank shall be subject to applicable provisions of
195 section twenty-nine of chapter one hundred and seventy.

196 (4) any one or more such trust companies may, upon compliance with the provisions of
197 section seventy-eight of chapter one hundred and fifty-six B, which are hereby made applicable
198 in all such cases and subject as to any such trust company to the provisions of section eighty-five
199 of chapter one hundred and fifty-six B as modified for the purposes of this section by the
200 provisions hereof, consolidate or merge into any single state or federally-chartered stock
201 corporation. A request for approval by the commissioner of such a consolidation or merger shall
202 be accompanied by an investigation fee, the amount of which shall be determined annually by
203 the commissioner of administration under the provision of section three B of chapter seven. A
204 certificate under the hands of the presidents and clerks or other duly authorized officers of all
205 merging or consolidating corporations setting forth that each corporation, respectively, has
206 complied with the requirements of this section shall be submitted to the commissioner. No such
207 transaction under this section shall be consummated until arrangements satisfactory to any excess
208 deposit insurer of each such bank have been made and notice thereof has been received by the
209 commissioner. The offices and depots of any such corporation merged or consolidated under this

210 section may be maintained as branch offices or depots, respectively, of the continuing institution
211 with the written permission of and under such conditions, if any, as may be approved by the
212 commissioner.

213 If the consolidating corporations have main offices in different states or counties, the
214 main office of the continuing corporation shall be the main office of that consolidating
215 corporation which has the greater total assets on the date on which the merger or consolidation is
216 approved by the board of the last consolidating corporation so to approve; provided, however,
217 that upon a determination by the commissioner that such consolidation is not for the purpose of
218 circumventing any geographic restrictions on the establishment of branch offices, he may allow
219 the main office of the consolidating corporation which has the lesser total assets on such date to
220 be the main office of the continuing corporation.

221 If the merging or consolidating corporations are chartered by or, in the case of federally
222 chartered stock corporations, have their main offices located in and are authorized to do business
223 in different states, then from and after the effective date of the merger or consolidation, the
224 citizenship and residency requirements for directors set forth in section thirteen shall no longer
225 apply, and any citizen of the United States may serve as director of the continuing corporation.

226 For the purposes of this section, the value of the stock of stockholders of a state-chartered
227 stock corporation who have, as provided in section seventy-six or section eighty-five of chapter
228 one hundred and fifty-six B, voted against any action authorized herein shall be ascertained in
229 the manner provided in sections eighty-six to ninety-eight, inclusive, of said chapter one hundred
230 and fifty-six B.

231 The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
232 consolidations and mergers of state-chartered stock corporations authorized under this section
233 provided that, for this purpose, references in said section eighty to said chapter one hundred and
234 fifty-six B shall be deemed to be to the chapter of the General Laws governing such stock
235 corporation, and references in said section eighty to articles of organization shall be deemed to
236 be to the articles of organization, including any special act of incorporation, as from time to time
237 amended.

238 The provisions of this clause shall not apply to a consolidation or merger authorized by
239 clause (1) or to a consolidation or merger under subsection B.

240 In deciding whether or not to approve any such consolidation or merger under this
241 subsection, the commissioner shall determine whether or not competition among banking
242 institutions will be unreasonably affected and whether or not public convenience and advantage
243 will be promoted. In making such determination, the commissioner shall consider, but not be
244 limited to, a showing of net new benefits. For the purpose of this section, the term “net new
245 benefits” shall mean initial capital investments, job creation plans, consumer and business
246 services, commitments to maintain and open branch offices within a bank’s delineated local
247 community, as such term is used within section fourteen of chapter one hundred and sixty-seven,
248 and such other matters as the commissioner may determine.

249 For the purposes of this section, a state-chartered stock corporation shall mean a trust
250 company, savings bank, or a cooperative bank in stock form chartered by the commonwealth, or
251 a bank chartered by a country other than the United States. A federally chartered stock

252 corporation shall mean a national banking association, federal savings and loan association or
253 federal savings bank in stock form which has its main office located in the commonwealth.

254 B. A trust company or banking company by vote of the holders of at least two- thirds of
255 each class of capital stock at a meeting duly called for the purpose, preceded by a notice in
256 writing sent to each stockholder of record and to the commissioner by registered mail at least
257 sixty days before said meeting, may consolidate or merge into or convert into a national banking
258 association in accordance with the laws of the United States and without the approval of any
259 authority of the commonwealth.

260 C. For the purposes of either clause (1) or clause (2) of subsection A hereof, the value of
261 the stock of stockholders of a trust company or banking company who have, as provided in
262 section seventy-six or section eighty-five of chapter one hundred and fifty-six B, voted against
263 any action authorized by either of such clauses shall be ascertained in the manner provided in
264 sections eighty-six to ninety-eight, inclusive, of said chapter one hundred and fifty-six B.

265 D. The continuing state-chartered stock corporation into which a trust company, banking
266 company or a national banking association shall have been consolidated or merged or into which
267 a federally chartered stock corporation shall have been converted under this section shall be
268 considered the same business and corporate entity as that of the consolidating or merging or
269 converting institution and the rights, powers and duties of the continuing trust company shall be
270 those established by its charter; provided that if the consolidating corporations have main offices
271 in different counties, the main office of the continuing corporation shall be the main office of
272 that consolidating corporation which has the greater total assets on the date on which the merger
273 or consolidation is approved by the board of directors of the last consolidating corporation so to

274 approve; provided, further, that upon a determination by the commissioner that such
275 consolidation is not for the purpose of circumventing any geographic restrictions on the
276 establishment of branch offices, he may allow the main office of the consolidating corporation
277 which has the lesser total assets on such date to be the main office of the continuing corporation.

278 E. The charter of any trust company or banking company which shall have been
279 converted into a national banking association, or consolidated or merged into, or the business and
280 substantially all of the property and assets of which shall have been purchased or absorbed by a
281 trust company or national banking association, or the affairs of which shall have been liquidated,
282 shall be void except for the purpose of discharging existing obligations and liabilities.

283 F. The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
284 consolidations and mergers of trust companies authorized under this section provided that, for
285 this purpose, references in said section eighty to said chapter one hundred and fifty-six B shall be
286 deemed to be to this chapter, and references in said section eighty to articles of organization shall
287 be deemed to be to the articles of organization, including any special act of incorporation, as
288 from time to time amended.