

HOUSE No. 4176

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 6, 2019.

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

For the committee,

AARON MICHLEWITZ.

FILED ON: 11/6/2019

HOUSE No. 4176

The Commonwealth of Massachusetts

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

An Act relative to banks and banking.

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

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

SECTION 1. 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 striking out section 1 and inserting in place thereof the following section:-

Section 1. All the savings banks established under the laws of the commonwealth and subject to the provisions of chapter 168 of the General Laws, hereinafter referred to as member banks, are hereby constituted a corporation under the name of the Depositors Insurance Fund, hereinafter referred to as the corporation. All the co-operative banks established under the laws of the commonwealth and subject to the provisions of chapter 170 of the General Laws shall also be members of the corporation, and the term “member bank” shall mean each such savings bank and co-operative bank. It shall be the purpose of the corporation to assist such member banks, when they are temporarily in need of cash or hold investments which cannot readily be liquidated, by making loans to them or any of them secured by the pledge of mortgages or other securities legally held by such member banks. Any bank established under the authority of said chapters 168 and 170 shall upon its organization be a member bank; provided, that such bank meets the membership qualification requirements of section 17B of chapter 43 of the acts of 1934, at all times. The assets of the corporation shall be divided into 2 separate and distinct funds, as follows: (a) the Liquidity Fund, which shall consist of all assessments collected under section 4 and all investments thereof and all income thereon; and (b) the Deposit Insurance Fund, established by said chapter 43 of the acts of 1934.

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

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

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 2. Section 2 of said chapter 44, as most recently amended by section 21 of chapter 64 of the acts of 1999, is hereby further amended by striking the first sentence and inserting in place thereof the following sentence:- The officers of the corporation shall be a president, 1 or more vice-presidents, a treasurer, a clerk and such other officers as the by-laws may provide.

SECTION 3. Said section 2 of said chapter 44, as so amended, is hereby further amended by adding the following 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 pursuant to section 17B of chapter 43 of the acts of 1934.

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

(e) Deposits in federally insured banks.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. Section 10 of said chapter 43, as most recently amended by section 25 of chapter 64 of the acts of 1999, is hereby amended by striking the seventh sentence and inserting in place thereof the following 2 sentences:- Upon any such vote to dissolve and liquidate the Deposit Insurance Fund, the corporation shall distribute, over a period of not more than 12 months, the amount of the fund so voted for distribution. 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 Co-operative Central Bank and the corporation within 3 years from the effective date of said merger.

SECTION 16. The fourth subparagraph of paragraph (a) of section 17 of said chapter 43, as appearing in section 29 of chapter 64 of the acts of 1999, is hereby amended by adding the following sentence:- 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 17. Said chapter 43 is hereby amended by inserting after section 17A, as added by section 30 of chapter 64 of the acts of 1999, the following section:-

Section 17B. (a) 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.

(b) Whenever the corporation, by at least a 2/3 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 its determination and the basis for its determination. If the commissioner agrees with the corporation's determination, the directors may require the member bank to meet the 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.

(c) 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 the member bank in writing, including an explanation for the basis of its determination, and advise the member bank of any of the requirements imposed pursuant to paragraph (b). The member bank shall, within 60 days, comply with the requirements enumerated in the written notification. Notwithstanding any general or special law to the contrary, if a member bank, which is not a savings bank, fails to comply within the 60-day period, the member bank shall by operation of law, become a savings bank subject to chapter 168 of the General Laws at the end of the 60-day period.

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

(e) Upon the conversion of a member bank into a savings bank, the corporate existence of the member bank shall not terminate, but such savings bank shall be deemed to be a continuation of the entity of the member bank so converted and all property of the converted member bank including its rights, title and interests in and to all property, 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 member 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 name as a savings bank, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against such converting bank theretofore involved in such judicial proceedings.

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

SECTION 18. (a) The Co-operative Central Bank, established by chapter 45 of the acts of 1932, may merge with and into the Depositors Insurance Fund, in this section and in section 19 referred to as the corporation, under the name of the corporation, pursuant to an agreement and plan of merger. Prior to the merger between the Co-operative Central Bank and the corporation, the boards of directors of the Co-operative Central

Bank and the corporation shall approve of the agreement and plan of merger by a 2/3 vote. The agreement and plan of merger shall establish the terms and conditions of the merger, in addition to those terms and conditions set forth in this section, which shall include membership qualification requirements to be incorporated into the corporation's by-laws, effective as of the consummation of any such merger, and any other provisions the corporation deems appropriate to effectuate the provisions of this act.

(b) Upon receipt of the required approval of the directors of the Co-operative Central Bank and the corporation, the articles of merger and the surviving corporation's amended by-laws shall be filed with the commissioner of banks and 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. The 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.

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

(d) 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.

(e) 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.

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

SECTION 20. Notwithstanding section 2 of chapter 44 of the acts of 1932, for a period of 3 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 12 and may impose term limits in order to effectuate the purposes of this act.

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

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

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