HOUSE DOCKET, NO. 1887 FILED ON: 1/20/2011

HOUSE . . . . . No. 1209

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Nangle

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 passage of the accompanying:

An act updating certain banking laws.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
David M. Nangle	*17th Middlesex*

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HOUSE . . . . . No. 1209

By Mr. Nangle of Lowell, a petition (accompanied by bill, House, No. 1209) of David M. Nangle for legislation to update certain banking laws. Financial Services.

The Commonwealth of Massachusetts

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:

SECTION 1.

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

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

SECTION 2:

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

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

SECTION 3:

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

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

49 SECTION 5

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

52 Copies of the minutes of the proceedings of such meeting of members or trustees verified
53 by the affidavit of the secretary or an assistant secretary or clerk shall be filed in the office of the
54 commissioner and mailed to the Office of the Comptroller of the Currency within ten days after
55 such meeting. Such verified copies of the proceedings of the meeting when so filed shall be
56 presumptive evidence of the holding and action of such meeting. At the meeting at which

57 conversion is voted upon, the members or trustees shall also vote upon the persons who shall be
58 the corporators and trustees of the state-chartered savings bank after conversion takes effect.

59 SECTION 6:

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

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

70 SECTION 7:

71 Section 29 of Chapter 170, as so appearing, is herby amended by striking out the first
72 paragraph and inserting in place thereof:

73 Any federal savings and loan association may convert itself into a co-operative bank
74 upon the same terms and conditions that from time to time shall apply under federal law and
75 regulations to the conversion of a co-operative bank to such an association; provided, however,
76 that where authority is conferred upon the Office of the Comptroller of the Currency, in the case
77 of a conversion from a co-operative bank to an association, similar authority, in the case of a
78 conversion from such an association to a co-operative bank, unless expressly provided in this
79 section is hereby conferred upon the board of bank incorporation.

80 SECTION 8

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

83 Each director shall own, in his own right and free of any lien or encumbrance, common
84 stock, either of such corporation or of a company owning seventy-five per cent of the stock of
85 such corporation, having a par value, or a fair market value on the date the person became a
86 director, of not less than one thousand dollars. Any director who ceases to be the owner of the
87 required number of shares of stock, or who becomes in any other manner disqualified, shall
88 vacate his office forthwith. Each director, when appointed or elected, shall take an oath that he
89 will faithfully perform the duties of his office and that he is the owner, in his own right and free
90 of any lien or encumbrance, of the amount of stock required by this section. The oath shall be

taken before a notary public or justice of the peace, and a record of the oath shall be made a part of the records of such corporation.

SECTION 9:

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

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

SECTION 10:

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

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

(1) any trust company, any banking company, or any national banking association engaged in the business of banking in the commonwealth may, upon compliance with the provisions of section seventy-eight of chapter one hundred and fifty-six B, which are hereby made applicable in all such cases, and subject, as to any such trust company or banking company, to the provisions of section eighty-five of chapter one hundred and fifty-six B as modified for the purposes of this section by the provisions hereof, consolidate or merge into any trust company. A request for approval by the commissioner of such a consolidation or merger shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

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

126 (3) by vote, at a meeting duly called for the purpose, of two-thirds of each class of its
127 stock outstanding and entitled to vote and upon execution by a majority of its directors in form
128 satisfactory to the commissioner of an agreement of association, an organization certificate and
129 such other instruments as the commissioner shall prescribe, any federally chartered stock
130 corporation having an unimpaired capital stock sufficient in value or amount to satisfy the
131 provisions of section five may, upon approval by the board of bank incorporation, be converted
132 into a state-chartered stock corporation and shall not, in connection with or upon such
133 conversion, be subject to the requirements of this chapter with respect to the organization and
134 commencement of business of trust companies, the requirements of chapter one hundred and
135 sixty-eight with respect to the organization and commencement of business of savings banks, or
136 the requirements of chapter one hundred and seventy with respect to the organization and
137 commencement of business of cooperative banks, as applicable; provided, however, that such
138 conversion shall not be in contravention of the laws of the United States; and provided, further,
139 that any such conversion into a state-chartered savings bank shall be subject to applicable
140 provisions of section thirty-eight of chapter one hundred and sixty-eight, and any such
141 conversion into a state-chartered cooperative bank shall be subject to applicable provisions of
142 section twenty-nine of chapter one hundred and seventy.

143 (4) any one or more such trust companies may, upon compliance with the provisions of
144 section seventy-eight of chapter one hundred and fifty-six B, which are hereby made applicable
145 in all such cases and subject as to any such trust company to the provisions of section eighty-five
146 of chapter one hundred and fifty-six B as modified for the purposes of this section by the
147 provisions hereof, consolidate or merge into any single state or federally-chartered stock
148 corporation. A request for approval by the commissioner of such a consolidation or merger shall
149 be accompanied by an investigation fee, the amount of which shall be determined annually by
150 the commissioner of administration under the provision of section three B of chapter seven. A
151 certificate under the hands of the presidents and clerks or other duly authorized officers of all
152 merging or consolidating corporations setting forth that each corporation, respectively, has
153 complied with the requirements of this section shall be submitted to the commissioner. No such
154 transaction under this section shall be consummated until arrangements satisfactory to any excess
155 deposit insurer of each such bank have been made and notice thereof has been received by the
156 commissioner. The offices and depots of any such corporation merged or consolidated under this
157 section may be maintained as branch offices or depots, respectively, of the continuing institution
158 with the written permission of and under such conditions, if any, as may be approved by the
159 commissioner.

160 If the consolidating corporations have main offices in different states or counties, the
161 main office of the continuing corporation shall be the main office of that consolidating
162 corporation which has the greater total assets on the date on which the merger or consolidation is
163 approved by the board of the last consolidating corporation so to approve; provided, however,
164 that upon a determination by the commissioner that such consolidation is not for the purpose of

165 circumventing any geographic restrictions on the establishment of branch offices, he may allow
166 the main office of the consolidating corporation which has the lesser total assets on such date to
167 be the main office of the continuing corporation.

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

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

178 The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
179 consolidations and mergers of state-chartered stock corporations authorized under this section
180 provided that, for this purpose, references in said section eighty to said chapter one hundred and
181 fifty-six B shall be deemed to be to the chapter of the General Laws governing such stock
182 corporation, and references in said section eighty to articles of organization shall be deemed to
183 be to the articles of organization, including any special act of incorporation, as from time to time
184 amended.

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

187 In deciding whether or not to approve any such consolidation or merger under this
188 subsection, the commissioner shall determine whether or not competition among banking
189 institutions will be unreasonably affected and whether or not public convenience and advantage
190 will be promoted. In making such determination, the commissioner shall consider, but not be
191 limited to, a showing of net new benefits. For the purpose of this section, the term "net new
192 benefits" shall mean initial capital investments, job creation plans, consumer and business
193 services, commitments to maintain and open branch offices within a bank's delineated local
194 community, as such term is used within section fourteen of chapter one hundred and sixty-seven,
195 and such other matters as the commissioner may determine.

196 For the purposes of this section, a state-chartered stock corporation shall mean a trust
197 company, savings bank, or a cooperative bank in stock form chartered by the commonwealth, or
198 a bank chartered by a country other than the United States. A federally chartered stock
199 corporation shall mean a national banking association, federal savings and loan association or
200 federal savings bank in stock form which has its main office located in the commonwealth.

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

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

212 D. The continuing state-chartered stock corporation into which a trust company, banking
213 company or a national banking association shall have been consolidated or merged or into which
214 a federally chartered stock corporation shall have been converted under this section shall be
215 considered the same business and corporate entity as that of the consolidating or merging or
216 converting institution and the rights, powers and duties of the continuing trust company shall be
217 those established by its charter; provided that if the consolidating corporations have main offices
218 in different counties, the main office of the continuing corporation shall be the main office of
219 that consolidating corporation which has the greater total assets on the date on which the merger
220 or consolidation is approved by the board of directors of the last consolidating corporation so to
221 approve; provided, further, that upon a determination by the commissioner that such
222 consolidation is not for the purpose of circumventing any geographic restrictions on the
223 establishment of branch offices, he may allow the main office of the consolidating corporation
224 which has the lesser total assets on such date to be the main office of the continuing corporation.

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

230 F. The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
231 consolidations and mergers of trust companies authorized under this section provided that, for
232 this purpose, references in said section eighty to said chapter one hundred and fifty-six B shall be
233 deemed to be to this chapter, and references in said section eighty to articles of organization shall
234 be deemed to be to the articles of organization, including any special act of incorporation, as
235 from time to time amended.