HOUSE DOCKET, NO. 1076 FILED ON: 1/16/2013

HOUSE . . . . . No. 871

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 establishing uniform enforcement provisions and making other changes applicable to certain licensees under the jurisdiction of the Division of Banks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	*1st Essex*
James M. Murphy	*4th Norfolk*

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HOUSE . . . . . No. 871

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 871) of Michael A. Costello and James M. Murphy establishing uniform enforcement provisions and making other changes applicable to certain licensees under the jurisdiction of the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1196* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act establishing uniform enforcement provisions and making other changes applicable to certain licensees under the jurisdiction of the Division of Banks.

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 24B of chapter 93, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following:—

(b) Each license shall state the address at which the business is to be conducted and shall state the name of the licensee. If a licensee intends to carry on such business at any place in addition to the address on the license, he shall so notify the commissioner, in writing, at least 30 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as determined by the commissioner. Such notice shall contain the address of any such additional location and such other information as the commissioner may require; provided, however, that any such business shall at all times be conducted in the name of the licensee as it appears on the license. A copy of such license shall be posted as determined by the Commissioner. Such copies for places of business at addresses other than that appearing on the license may be obtained at a reasonable cost, as determined by the commissioner. Such license shall not be transferable or assignable and shall expire annually on a date determined by the commissioner.

SECTION 2. Chapter 93 of the General Laws, as so appearing, is hereby amended by striking out section 24F and inserting in place thereof the following section:—

16 Section 24F. The commissioner, or such other of his assistants as he may designate, may
17 summon a licensee, or any of his agents or employees, and other witnesses as he considers
18 necessary, and examine them relative to their transactions, may require the production of books
19 and papers and, for those purposes may administer oaths. Whoever, without justifiable cause,
20 fails or refuses to appear and testify or to produce books and papers when so required, or
21 obstructs the commissioner or his representatives in the performance of their duties, shall be
22 punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or
23 both. Each day a violation occurs or continues shall be considered a separate offense. The
24 penalty provision of this section shall be in addition to, and not in lieu of, any other provision of
25 law applicable to a licensee or other person for violating section 24A or any rule or regulation
26 made thereunder.

27 SECTION 3. Chapter 93 of the General Laws, as so appearing, is hereby amended by
28 adding after section 24K the following two sections:—

29 Section 24L. (a) Whenever the commissioner finds that any licensee or exempt
30 person under section 24A of this chapter has violated any provision of this chapter or any rule or
31 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
32 of the business of a debt collector or a third party loan servicer, the commissioner may, by order,
33 in addition to any other action authorized under this chapter or any rule or regulation made
34 thereunder, impose a penalty upon such person which shall not exceed five thousand dollars for
35 each violation, up to a maximum of one hundred thousand dollars for such violation plus the
36 costs of investigation. The commissioner may impose a penalty which shall not exceed five
37 thousand dollars for each violation of this chapter, or any rule or regulation adopted thereunder,
38 by a person other than a licensee or exempt person under section 24A of this chapter, plus the
39 costs of investigation.

40 (b) Nothing in this section shall limit the right of any individual or entity who has
41 been injured as a result of any violation of this chapter by a licensee, or any person other than a
42 licensee or exempt person under section 24A of this chapter, to bring an action to recover
43 damages or restitution in a court of competent jurisdiction.

44 (c) Any findings or order issued by the commissioner pursuant to this section shall be
45 subject to review as provided in chapter thirty A.

46 Section 24M. (a) Whenever the commissioner determines that any person has, directly or
47 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
48 applicable to the conduct of the business of a debt collector or a third party loan servicer; or any
49 order issued by the commissioner under this chapter or any written agreement entered between
50 such licensee and the commissioner; the commissioner may serve upon such person a written
51 notice of intention:

52 (1) to prohibit such person from performing in the capacity of a principal employee on
53 behalf of any licensee for such period of time that the commissioner deems necessary;

54 (2) to prohibit the person from applying for or obtaining a license from the commissioner
55 for a period up to thirty-six months following the effective date of an order issued under
56 subsection (b) or (c); or

57 (3) to prohibit such person from any further participation, in any manner, in the conduct
58 of the affairs of a debt collector or a third party loan servicer in Massachusetts or to prohibit such
59 person from being employed by, an agent of, or operating on behalf of a licensee under this
60 chapter or any other business which requires a license from the commissioner.

61 (b) A written notice issued under subsection (a) shall contain a written statement of the
62 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
63 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
64 upon the commissioner of such request for a hearing. If such person fails to submit a request for
65 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
66 appear in person or by a duly authorized representative, such party shall be deemed to have
67 consented to the issuance of an order of such prohibition in accordance with the notice.

68 (c) In the event of such consent under subsection (b), or if after a hearing the
69 commissioner finds that any of the grounds specified in such notice have been established, the
70 commissioner may issue an order of prohibition in accordance with subsection (a) as the
71 commissioner finds appropriate.

72 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
73 person. The commissioner shall also serve a copy of the order upon the licensee of which the
74 person is an employee or on whose behalf the person is performing. The order shall remain in
75 effect and enforceable until it is modified, terminated, suspended, or set aside by the
76 commissioner or a court of competent jurisdiction.

77 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
78 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
79 part in the conduct of the affairs of a debt collector or a third party loan servicer in Massachusetts
80 may not, while such order is in effect, continue or commence to perform in the capacity of a
81 principal employee, or otherwise participate in any manner, if so prohibited by order of the
82 commissioner, in the conduct of the affairs of:

83 (1) any licensee under this chapter;

84 (2) any other business which requires a license from the commissioner; and

85 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
86 subsidiary thereof.

87 SECTION 4. Chapter 140 of the General Laws, as so appearing, is hereby amended by
88 striking out section 96 and inserting in place thereof the following section:—

89 Section 96. No person shall directly or indirectly engage in the business of making loans
90 of nine thousand dollars or less, adjusted to the average annual rate of inflation as measured by
91 the Consumer Price Index released for the previous year and announced each year as of March 1
92 by the commissioner, if the amount to be paid on any such loan for interest and expenses exceeds
93 in the aggregate an amount equivalent to twelve per cent per annum upon the sum loaned,
94 without first obtaining from the commissioner of banks, in sections ninety-six to one hundred
95 and fourteen, inclusive, called the commissioner, a license to carry on the said business in the
96 town where the business is to be transacted.

97 When an application for a loan or for an endorsement or guarantee or for the purchase of
98 a note is made by any person within this commonwealth, and the money is advanced or the
99 endorsement or guarantee is made or furnished by any person without this commonwealth, the
100 transaction shall be deemed a loan made within this commonwealth, and such a loan and the
101 parties making it shall be subject to sections ninety-six to one hundred and thirteen, inclusive.
102 The buying or endorsing of notes or the furnishing of guarantee or security for compensation
103 shall be considered to be engaging in the business of making small loans within said sections, but
104 the foregoing provisions of this sentence shall not apply in the case of any transaction which
105 involves any note or other instrument evidencing the indebtedness of a buyer to the seller of
106 goods, services or insurance for a part or all of the purchase price; provided, however, that any
107 advance of money by such seller or, by a person acting on his behalf for the purpose of paying an
108 existing indebtedness of such buyer or for any other purpose shall constitute a loan of money
109 subject to the provisions of this section. For the purposes of said sections, the amount to be paid
110 upon any such loan for interest or expenses shall include all sums paid or to be paid by or on
111 behalf of the borrower for interest, brokerage, recording fees, commissions, services, extension
112 of loan, forbearance to enforce payment, and all other sums charged against or paid or to be paid
113 by the borrower for making or securing directly or indirectly the loan, and shall include all such
114 sums when paid by or on behalf of or charged against the borrower for or on account of making
115 or securing the loan, directly or indirectly, to or by any person, other than the lender, if such
116 payment or charge was known to the lender at the time of making the loan, or might have been
117 ascertained by reasonable inquiry. Any person directly or indirectly engaging, for a fee,
118 commission, bonus or other consideration, in the business of negotiating, arranging, aiding or
119 assisting the borrower or lender in procuring or making such loans, for which the amount paid or
120 to be paid for interest and expenses, including all amounts paid or to be paid to any other party
121 therefor, exceeds in the aggregate an amount equivalent to twelve per cent per annum, whether
122 such loans are actually made by such person or by another party, shall be deemed to be engaged
123 in the business of making small loans, and shall be subject to sections ninety-six to one hundred
124 and twelve, inclusive. If, after all deductions or payments, whether on account of interest,
125 expenses or principal made substantially contemporaneously with the making of the loan, the

126 amount retained by the borrower be nine thousand dollars or less, as so adjusted, as provided
127 herein, the transaction shall be deemed to be a loan in the amount of the sum so retained by the
128 borrower after such deductions or payments, notwithstanding that the loan be nominally for a
129 greater sum.

130 This section shall not apply to loans that are subject to section 90A or section 28B of
131 chapter 183.

132 The provisions of this section and sections ninety-six A to one hundred and fourteen A,
133 inclusive, shall apply only to loans made primarily for personal, family or household purpose;
134 provided, however, that the provisions of this section and said sections ninety-six A to one
135 hundred and fourteen, inclusive, shall not apply to loans to any student, or to any parent, legal
136 guardian or sponsor of a student, made by any nonprofit, public or independent post-secondary
137 educational institution within the commonwealth authorized by law to grant degrees, by the
138 commonwealth or by any agency or instrumentality thereof; and provided, further, that such
139 institutions may not take, receive, reserve, or charge interest, expenses and other consideration
140 for making or securing such loan in excess of those permitted by section one hundred, except in
141 the event of prepayment or refinancing, in whole or in part, of any existing loans by such
142 institution to any such student, or to any such parent, legal guardian or sponsor of a student,
143 which refinancing or prepayment occurs within eighteen months of the date such loan was made.

144 SECTION 5. Section 98 of chapter 140 of the General Laws, as so appearing, is hereby
145 amended by striking out the words "the fifteenth day of April" in line 3 and inserting in place
146 thereof the words:— a date to be determined by the commissioner.

147 SECTION 6. Section 99 of chapter 140 of the General Laws, as so appearing, is hereby
148 amended by striking out section 99 and inserting in place thereof the following section:—

149 Section 99. The commissioner may summon said licensees, companies or associations,
150 or any of their agents or employees, and such other witnesses as he deems necessary, and
151 examine them relative to their transactions and to the condition of their business, and for that
152 purpose may administer oaths. Whoever without justifiable cause refuses to appear and testify
153 when so required, or obstructs the commissioner or his representatives in the performance of
154 their duties, shall be punished by a fine of not more than one thousand dollars or by
155 imprisonment for not more than six months, or both. The penalty provision of this section shall
156 be in addition to, and not in lieu of, any other provision of law applicable to a licensee or other
157 person for violating section 96 or any rule or regulation made thereunder.

158

159 SECTION 7. Chapter 140, as so appearing, is hereby amended by striking out section
160 101 and inserting in place thereof the following section:—

161 Section 101. Each license shall state the address at which the business is to be conducted
162 and shall state the name of the licensee. If a licensee intends to carry on such business at any
163 place in addition to the address on the license, he shall so notify the commissioner, in writing, at
164 least 30 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost
165 as determined by the commissioner. Such notice shall contain the address of any such additional
166 location and such other information as the commissioner may require; provided, however, that
167 any such business shall at all times be conducted in the name of the licensee as it appears on the
168 license. A copy of such license shall be posted as determined by the Commissioner. Such
169 copies for places of business at addresses other than that appearing on the license may be
170 obtained at a reasonable cost, as determined by the commissioner. Such license shall not be
171 transferable or assignable and shall expire annually on a date determined by the commissioner.

172 SECTION 8. Chapter 140 of the General Laws, as so appearing, is hereby amended by
173 striking out section 103, and inserting in place thereof the following three sections:—

174 Section 103. Whoever, being duly licensed as provided in section ninety-six, violates
175 any provision of sections ninety-seven, ninety-eight, one hundred and one, one hundred and two,
176 one hundred and four or one hundred and nine, or any regulation, rule or order made by the
177 commissioner under sections ninety-seven or one hundred and six, shall be punished by a fine of
178 not more than one thousand dollars, and his license may be suspended or revoked by the
179 commissioner. Each day such violation occurs or continues shall be deemed a separate offense.

180 Whoever, being so licensed, violates the provisions of section one hundred shall be
181 punished by a fine of not more than one thousand dollars or by imprisonment for not more than
182 one year, or both. Each day such violation occurs or continues shall be deemed a separate
183 offense. Any loan made by any person so licensed in violation of said section one hundred may
184 be declared void by the supreme judicial or superior court in equity upon petition by the person
185 to whom the loan was made.

186 The commissioner may also suspend or revoke any license issued pursuant to section
187 ninety-six if said commissioner finds that:

188 (i) the licensee has violated any provision of sections ninety-six to one hundred and
189 fourteen, inclusive, or any rule or regulation made by the commissioner under any provision of
190 sections ninety-six to one hundred and fourteen, inclusive, or any other law applicable to the
191 conduct of the business; or

192 (ii) any fact or condition exists which, if it had existed at the time of the original
193 application for such license, would have warranted the commissioner in refusing to issue such
194 license.

195 Except as provided in section one hundred and three A, no license shall be revoked or
196 suspended except after notice and a hearing thereon pursuant to chapter thirty A.

197 A licensee may surrender a license by delivering to the commissioner written notice that
198 it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability
199 of the licensee for acts committed before such surrender.

200 No revocation, suspension or surrender of any license shall impair or affect the obligation
201 of any pre-existing lawful contract between the licensee and any person.

202 The penalty provision of this section shall be in addition to, and not in lieu of, any other
203 provision of law applicable to a licensee or other person for violating section ninety-six, ninety-
204 seven, ninety-eight, one hundred, one hundred and one, one hundred and two, one hundred and
205 four, one hundred and six, and one hundred and nine or any rule or regulation made thereunder.

206 Section 103A. (a) If the commissioner determines, after giving notice of an opportunity
207 for a hearing, that a licensee has engaged or is about to engage in an act or practice constituting a
208 violation of a provision of sections ninety-seven, ninety-eight, one hundred, one hundred and
209 one, one hundred and two, one hundred and four or one hundred and nine, or any rule or
210 regulation made by the commissioner under section ninety-seven or one hundred and six, or any
211 other law applicable to the conduct of the business, he may order such licensee to cease and
212 desist from such unlawful act or practice and take such affirmative action as in his judgment will
213 effect the purpose of sections ninety-seven, ninety-eight, one hundred, one hundred and one, one
214 hundred and two, one hundred and four or one hundred and nine, or any rule or regulation made
215 by the commissioner under section ninety-seven or one hundred and six, or any other law
216 applicable to the conduct of the business.

217 (b) If the commissioner makes written findings of fact that the public interest will be
218 irreparably harmed by delay in issuing an order under section (a) he may issue a temporary cease
219 and desist order. Upon the entry of a temporary cease and desist order, the commissioner shall
220 promptly notify, in writing, the licensee affected thereby that such order has been so entered, the
221 reasons therefor, and that within twenty days after receipt of a written request from such
222 licensee, the matter will be scheduled for a hearing to determine whether or not such temporary
223 order shall become permanent and final. If no such hearing is requested and none is ordered by
224 the commissioner, the order shall remain in effect until it is modified or vacated by the
225 commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of and
226 opportunity for a hearing to the licensee subject to said order, shall, by written finding of facts
227 and conclusions of law, vacate, modify or make permanent the order.

228 (c) No order under this section, except an order issued pursuant to subsection (b), may be
229 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
230 modify an order under this section upon finding that the conditions which required such an order
231 have changed and that it is in the public interest to so vacate or modify.

232 Any order issued pursuant to this section shall be subject to review as provided in chapter
233 thirty A.

234 Section 103B. The commissioner may enforce the provisions of section ninety-six
235 through one hundred and fourteen A, or restrain any violations thereof, by filing a civil action in
236 any court of competent jurisdiction.

237 SECTION 9. Section 110 of chapter 140, as so appearing, is hereby amended by striking
238 out, in line 14, the words "six thousand dollars or less", and inserting in place thereof the
239 following words:— nine thousand dollars or less.

240 SECTION 10. Chapter 140 of the General Laws, as so appearing, is hereby amended by
241 adding after section 113 the following two sections:—

242 Section 113A. (a) Whenever the commissioner finds that any licensee or exempt
243 person under section ninety-six of this chapter has violated any provision of this chapter or any
244 rule or regulation adopted thereunder, or any other law of the Commonwealth applicable to the
245 conduct of the business of making small loans, the commissioner may, by order, in addition to
246 any other action authorized under this chapter or any rule or regulation made thereunder, impose
247 a penalty upon such person which shall not exceed five thousand dollars for each violation, up to
248 a maximum of one hundred thousand dollars for such violation plus the costs of investigation.
249 The commissioner may impose a penalty which shall not exceed five thousand dollars for each
250 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
251 licensee or exempt person under section ninety-six of this chapter, plus the costs of investigation.

252 (b) Nothing in this section shall limit the right of any individual or entity who has
253 been injured as a result of any violation of this chapter by a licensee, or any person other than a
254 licensee or exempt person under section ninety-six of this chapter, to bring an action to recover
255 damages or restitution in a court of competent jurisdiction.

256 (c) Any findings or order issued by the commissioner pursuant to this section shall be
257 subject to review as provided in chapter thirty A.

258 Section 113B. (a) Whenever the commissioner determines that any person has, directly or
259 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
260 applicable to the conduct of the business of making small loans; or any order issued by the
261 commissioner under this chapter or any written agreement entered between such licensee and the
262 commissioner; the commissioner may serve upon such person a written notice of intention:

263 (1) to prohibit such person from performing in the capacity of a principal employee on
264 behalf of any licensee for such period of time that the commissioner deems necessary;

265 (2) to prohibit the person from applying for or obtaining a license from the commissioner
266 for a period up to thirty-six months following the effective date of an order issued under
267 subsection (b) or (c); or

268

269 (3) to prohibit such person from any further participation, in any manner, in the conduct
270 of the affairs of a business making small loans in Massachusetts or to prohibit such person from
271 being employed by, an agent of, or operating on behalf of a licensee under this chapter or any
272 other business which requires a license from the commissioner.

273 (b) A written notice issued under subsection (a) shall contain a written statement of the
274 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
275 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
276 upon the commissioner of such request for a hearing. If such person fails to submit a request for
277 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
278 appear in person or by a duly authorized representative, such party shall be deemed to have
279 consented to the issuance of an order of such prohibition in accordance with the notice.

280 (c) In the event of such consent under subsection (b), or if after a hearing the
281 commissioner finds that any of the grounds specified in such notice have been established, the
282 commissioner may issue an order of prohibition in accordance with subsection (a) as the
283 commissioner finds appropriate.

284 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
285 person. The commissioner shall also serve a copy of the order upon the licensee of which the
286 person is an employee or on whose behalf the person is performing. The order shall remain in
287 effect and enforceable until it is modified, terminated, suspended, or set aside by the
288 commissioner or a court of competent jurisdiction.

289 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
290 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
291 part in the conduct of the affairs of a business making small loans in Massachusetts may not,
292 while such order is in effect, continue or commence to perform in the capacity of a principal
293 employee, or otherwise participate in any manner, if so prohibited by order of the commissioner,
294 in the conduct of the affairs of:

295 (1) any licensee under this chapter;

296 (2) any other business which requires a license from the commissioner; and

297 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
298 subsidiary thereof.

299 SECTION 11. Chapter 140 of the General Laws, as so appearing, is hereby amended by
300 striking section 114A and inserting in place thereof the following section:—

301 Section 114A. A bank as defined in section one of chapter one hundred sixty-seven, a
302 national banking association, a federally chartered credit union, a federal savings and loan
303 association, a federal savings bank, or any subsidiary of the above, or any bank, trust company,

304 savings bank, savings and loan association, or credit union organized under the laws of any other
305 state, or any subsidiary of the above, shall not be subject to the provisions of sections ninety-six
306 to one hundred fourteen, inclusive; provided, that such institutions may not take, receive, reserve
307 or charge interest, expenses and other considerations for making or securing any loan subject to
308 the provisions of section ninety-six in excess of those permitted by section one hundred. Any
309 loan subject to the provisions of section ninety-six made by any bank as defined in section one of
310 chapter one hundred sixty-seven, a national banking association, a federally-chartered credit
311 union, a federal savings and loan association, a federal savings bank, or any subsidiary of the
312 above, or any bank, trust company, savings bank, savings and loan association, or credit union
313 organized under the laws of any other state on which charges for interest, expenses and other
314 considerations exceed those permitted by section one hundred may be declared void by the
315 supreme judicial court or superior court in equity upon petition by the person to whom the loans
316 were made, and any such bank as defined section one of chapter one hundred sixty-seven, a
317 national banking association, a federally chartered credit union, a federal savings and loan
318 association, a federal savings bank, or any subsidiary of the above, or any bank, trust company,
319 savings bank, savings and loan association, or credit union organized under the laws of any other
320 state making such a loan shall be subject to a fine of not more than one thousand dollars.

321 This section shall not be construed as preventing a rate of charge for interest, expenses
322 and other consideration on one or more portions of a loan in excess of the permitted maximum
323 rate of charge applicable to said portion or portions, provided, that the composite rate of charge
324 on the whole loan produces an amount equal to or less than that which would be produced were
325 said maximum rate of charge applied to said loan. Extension, default or deferment charges shall
326 not be deemed to be interest, expenses and other considerations in determining the maximum
327 rate of charge that may be taken, received, reserved or charged for said loan.

328 SECTION 12. Section 4 of chapter 167F of the General Laws, as so appearing, is hereby
329 amended by striking out the first paragraph and inserting in place thereof the following
330 paragraph:—

331 Any bank as defined in section one of chapter one hundred sixty-seven, a national
332 banking association, a federally-chartered credit union, a federal savings and loan association, a
333 federal savings bank, or any subsidiary of the above, any bank, trust company, savings bank,
334 savings and loan association, or credit union organized under the laws of any other state or any
335 subsidiary of the above, may engage directly in the business of selling, issuing or registering
336 checks or money orders for use primarily for personal, family, or household purposes, except all
337 of the institutions described above may engage in such business through agents who shall not be
338 deemed to be branches of such institutions. No person, other than the foregoing, shall engage in
339 such business directly or indirectly unless he files annually, as of a date determined by the
340 commissioner, a sworn statement setting forth his name and address, the names and business
341 addresses of his agents, other than the financial institutions described above, authorized to
342 receive money and transact such business on his behalf.

343 SECTION 13. Said section 4 of chapter 167F of the General Laws, as so appearing, is
344 hereby further amended by striking out the fifth paragraph and inserting in place thereof the
345 following paragraph:—

346 Whoever violates any provision of this section or any rule or regulation established
347 hereunder shall be punished by a fine of not more than one thousand dollars for each day during
348 which such violation continues. The penalty provision of this section shall be in addition to, and
349 not in lieu of, any other provision of law applicable to a licensee or other person for violating
350 section 4 or any rule or regulation made thereunder.

351 SECTION 14. Chapter 167F of the General Laws, as so appearing, is hereby amended by
352 adding after section 4 the following two sections:—

353 Section 4A. (a) Whenever the commissioner finds that any licensee or exempt
354 person under section 4 of this chapter has violated any provision of this chapter or any rule or
355 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
356 of the business of selling, issuing or registering checks or money orders, the commissioner may,
357 by order, in addition to any other action authorized under this chapter or any rule or regulation
358 made thereunder, impose a penalty upon such person which shall not exceed five thousand
359 dollars for each violation, up to a maximum of one hundred thousand dollars for such violation
360 plus the costs of investigation. The commissioner may impose a penalty which shall not exceed
361 five thousand dollars for each violation of this chapter, or any rule or regulation adopted
362 thereunder, by a person other than a licensee or exempt person under section 4 of this chapter,
363 plus the costs of investigation.

364 (b) Nothing in this section shall limit the right of any individual or entity who has
365 been injured as a result of any violation of this chapter by a licensee, or any person other than a
366 licensee or exempt person under section 4 of this chapter, to bring an action to recover damages
367 or restitution in a court of competent jurisdiction.

368 (c) Any findings or order issued by the commissioner pursuant to this section shall be
369 subject to review as provided in chapter thirty A.

370 Section 4B. (a) Whenever the commissioner determines that any person has, directly or
371 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
372 applicable to the conduct of the business of selling, issuing or registering checks or money
373 orders; or any order issued by the commissioner under this chapter or any written agreement
374 entered between such licensee and the commissioner; the commissioner may serve upon such
375 person a written notice of intention:

376 (1) to prohibit such person from performing in the capacity of a principal employee on
377 behalf of any licensee for such period of time that the commissioner deems necessary;

378 (2) to prohibit the person from applying for or obtaining a license from the commissioner
379 for a period up to thirty-six months following the effective date of an order issued under
380 subsection (b) or (c); or

381

382 (3) to prohibit such person from any further participation, in any manner, in the conduct
383 of the affairs of selling, issuing or registering checks or money orders in Massachusetts or to
384 prohibit such person from being employed by, an agent of, or operating on behalf of a licensee
385 under this chapter or any other business which requires a license from the commissioner.

386 (b) A written notice issued under subsection (a) shall contain a written statement of the
387 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
388 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
389 upon the commissioner of such request for a hearing. If such person fails to submit a request for
390 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
391 appear in person or by a duly authorized representative, such party shall be deemed to have
392 consented to the issuance of an order of such prohibition in accordance with the notice.

393 (c) In the event of such consent under subsection (b), or if after a hearing the
394 commissioner finds that any of the grounds specified in such notice have been established, the
395 commissioner may issue an order of prohibition in accordance with subsection (a) as the
396 commissioner finds appropriate.

397 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
398 person. The commissioner shall also serve a copy of the order upon the licensee of which the
399 person is an employee or on whose behalf the person is performing. The order shall remain in
400 effect and enforceable until it is modified, terminated, suspended, or set aside by the
401 commissioner or a court of competent jurisdiction.

402 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
403 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
404 part in the conduct of the affairs of business of selling, issuing or registering checks or money
405 orders in Massachusetts may not, while such order is in effect, continue or commence to perform
406 in the capacity of a principal employee, or otherwise participate in any manner, if so prohibited
407 by order of the commissioner, in the conduct of the affairs of:

408 (1) any licensee under this chapter;

409 (2) any other business which requires a license from the commissioner; and

410 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
411 subsidiary thereof.

412 SECTION 15. Chapter 169 of the General Laws, as so appearing, is hereby amended by
413 striking out Section 1 and inserting the following section:—

414 Section 1. This chapter shall apply to all persons who engage or are financially interested
415 in the business of receiving deposits of money for the purpose of transmitting the same or
416 equivalents thereof to foreign countries, except banks as defined in section one of chapter one
417 hundred sixty-seven, a national banking association, a federally-chartered credit union, a federal
418 savings and loan association, a federal savings bank, or any bank, trust company, savings bank,
419 savings and loan association, or credit union organized under the law of any other state, or any
420 subsidiary of the above, persons doing business under section forty-three of chapter one hundred
421 sixty-seven, express companies having contracts with transportation companies for the operation
422 of an express service upon the lines of such companies or express companies doing an
423 international express business or global transportation companies or telegraph companies.

424 SECTION 16. Section 3 of chapter 169 of the General Laws, as so appearing, is hereby
425 amended by striking out the eighth sentence.

426 SECTION 17. Section 4 of chapter 169, as so appearing, is hereby amended by striking
427 out the fifth and sixth sentences and inserting in place thereof the following six sentences:—

428 Each license shall state the address at which the business is to be conducted and shall
429 state the name of the licensee. If a licensee intends to carry on such business at any place in
430 addition to the address on the license, he shall so notify the commissioner, in writing, at least 30
431 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as
432 determined by the commissioner. Such notice shall contain the address of any such additional
433 location and such other information as the commissioner may require; provided, however, that
434 any such business shall at all times be conducted in the name of the licensee as it appears on the
435 license. A copy of such license shall be posted as determined by the Commissioner. Such
436 copies for places of business at addresses other than that appearing on the license may be
437 obtained at a reasonable cost, as determined by the commissioner. Such license shall not be
438 transferable or assignable and shall expire annually on a date determined by the commissioner.

439 SECTION 18. Section 9 of chapter 169 of the General Laws, as so appearing, is hereby
440 amended by striking out the first paragraph and inserting in place thereof the following
441 paragraph:—

442 Licensees shall annually, on or before a date to be determined by the commissioner, and
443 at such other times as the commissioner may specify, make a return to said commissioner in such
444 form as said commissioner may prescribe, signed and sworn to by such officer or person as said
445 commissioner may designate, which form shall disclose the condition of such licensee as of the
446 close of business on the last day of December or such other day as the commissioner may
447 prescribe.

448 SECTION 19. Section 16 of chapter 169 of the General Laws, as so appearing, is hereby
449 amended by adding the following sentence:—

450 The penalty provision of this section shall be in addition to, and not in lieu of, any other
451 provision of law applicable to a licensee or other person for violating any provision of this
452 chapter or any rule or regulation made thereunder.

453 SECTION 20. Chapter 169 of the General Laws, as so appearing, is hereby amended by
454 adding after section 16 the following two sections:—

455 Section 17. (a) Whenever the commissioner finds that any licensee or exempt
456 person under any provision of this chapter has violated any provision of this chapter or any rule
457 or regulation adopted thereunder, or any other law of the Commonwealth applicable to the
458 conduct of the business of receiving deposits of money for the purpose of transmitting the same
459 or equivalents thereof to foreign countries, the commissioner may, by order, in addition to any
460 other action authorized under this chapter or any rule or regulation made thereunder, impose a
461 penalty upon such person which shall not exceed five thousand dollars for each violation, up to a
462 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
463 commissioner may impose a penalty which shall not exceed five thousand dollars for each
464 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
465 licensee or exempt person under any provision of this chapter, plus the costs of investigation.

466 (b) Nothing in this section shall limit the right of any individual or entity who has
467 been injured as a result of any violation of this chapter by a licensee, or any person other than a
468 licensee or exempt person under any provision of this chapter, to bring an action to recover
469 damages or restitution in a court of competent jurisdiction.

470 (c) Any findings or order issued by the commissioner pursuant to this section shall be
471 subject to review as provided in chapter thirty A.

472 Section 18. (a) Whenever the commissioner determines that any person has, directly or
473 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
474 applicable to the conduct of the business of receiving deposits of money for the purpose of
475 transmitting the same or equivalents thereof to foreign countries; or any order issued by the
476 commissioner under this chapter or any written agreement entered between such licensee and the
477 commissioner; the commissioner may serve upon such person a written notice of intention:

478 (1) to prohibit such person from performing in the capacity of a principal employee on
479 behalf of any licensee for such period of time that the commissioner deems necessary;

480 (2) to prohibit the person from applying for or obtaining a license from the commissioner
481 for a period up to thirty-six months following the effective date of an order issued under
482 subsection (b) or (c); or

483

484 (3) to prohibit such person from any further participation, in any manner, in the conduct
485 of the affairs of a business of receiving deposits of money for the purpose of transmitting the
486 same or equivalents thereof to foreign countries in Massachusetts or to prohibit such person from
487 being employed by, an agent of, or operating on behalf of a licensee under this chapter or any
488 other business which requires a license from the commissioner.

489 (b) A written notice issued under subsection (a) shall contain a written statement of the
490 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
491 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
492 upon the commissioner of such request for a hearing. If such person fails to submit a request for
493 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
494 appear in person or by a duly authorized representative, such party shall be deemed to have
495 consented to the issuance of an order of such prohibition in accordance with the notice.

496 (c) In the event of such consent under subsection (b), or if after a hearing the
497 commissioner finds that any of the grounds specified in such notice have been established, the
498 commissioner may issue an order of prohibition in accordance with subsection (a) as the
499 commissioner finds appropriate.

500 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
501 person. The commissioner shall also serve a copy of the order upon the licensee of which the
502 person is an employee or on whose behalf the person is performing. The order shall remain in
503 effect and enforceable until it is modified, terminated, suspended, or set aside by the
504 commissioner or a court of competent jurisdiction.

505 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
506 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
507 part in the conduct of the affairs of a business of receiving deposits of money for the purpose of
508 transmitting the same or equivalents thereof to foreign countries in Massachusetts may not, while
509 such order is in effect, continue or commence to perform in the capacity of a principal employee,
510 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
511 conduct of the affairs of:

512 (1) any licensee under this chapter;

513 (2) any other business which requires a license from the commissioner; and

514 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
515 subsidiary thereof.

516 SECTION 21. Section 2 of chapter 169A of the General Laws, as so appearing, is hereby
517 amended, in line 7, by striking out the word “bank.” and inserting in place thereof the words:—

518 bank or any bank, trust company, savings bank, savings and loan association, or credit union
519 organized under the laws of any other state, or any subsidiary of the above,.

520 SECTION 22. Section 5 of chapter 169A, as so appearing, is hereby amended by striking
521 the first four sentences and inserting in place thereof the following six sentences:—

522 Each license shall state the address at which the business is to be conducted and shall
523 state the name of the licensee. If a licensee intends to carry on such business at any place in
524 addition to the address on the license, he shall so notify the commissioner, in writing, at least 30
525 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as
526 determined by the commissioner. Such notice shall contain the address of any such additional
527 location and such other information as the commissioner may require; provided, however, that
528 any such business shall at all times be conducted in the name of the licensee as it appears on the
529 license. A copy of such license shall be posted as determined by the commissioner. Such copies
530 for places of business at addresses other than that appearing on the license may be obtained at a
531 reasonable cost, as determined by the commissioner. Such license shall not be transferable or
532 assignable and shall expire annually on a date determined by the commissioner.

533 SECTION 23. Chapter 169A of the General Laws, as so appearing, is hereby amended
534 by striking out section 13 and inserting in place thereof the following section:—

535 Section 13. Whoever violates any provision of section two or any rule or regulation
536 made thereunder by the commissioner shall be punished by a fine of not more than one thousand
537 dollars or by imprisonment for not more than six months, or both. Each day a violation
538 continues shall be deemed a separate offense. The penalty provision of this section shall be in
539 addition to, and not in lieu of, any other provision of law applicable to a licensee or other person
540 for violating section two or any rule or regulation made thereunder.

541 SECTION 24. Chapter 169A of the General Laws, as so appearing, is hereby amended
542 by adding after said section 13 the following two sections:—

543 Section 14. (a) Whenever the commissioner finds that any licensee or exempt
544 person under section two of this chapter has violated any provision of this chapter or any rule or
545 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
546 of the business of cashing checks, drafts or money orders, the commissioner may, by order, in
547 addition to any other action authorized under this chapter or any rule or regulation made
548 thereunder, impose a penalty upon such person which shall not exceed five thousand dollars for
549 each violation, up to a maximum of one hundred thousand dollars for such violation plus the
550 costs of investigation. The commissioner may impose a penalty which shall not exceed five
551 thousand dollars for each violation of this chapter, or any rule or regulation adopted thereunder,
552 by a person other than a licensee or exempt person under section two of this chapter, plus the
553 costs of investigation.

554 (b) Nothing in this section shall limit the right of any individual or entity who has been
555 injured as a result of any violation of this chapter by a licensee, or any person other than a
556 licensee or exempt person under section two of this chapter, to bring an action to recover
557 damages or restitution in a court of competent jurisdiction.

558 (c) Any findings or order issued by the commissioner pursuant to this section shall be
559 subject to review as provided in chapter thirty A.

560 Section 15. (a) Whenever the commissioner determines that any person has, directly or
561 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
562 applicable to the conduct of the business of cashing checks, drafts or money orders; or any order
563 issued by the commissioner under this chapter or any written agreement entered between such
564 licensee and the commissioner; the commissioner may serve upon such person a written notice of
565 intention:

566 (1) to prohibit such person from performing in the capacity of a principal employee on
567 behalf of any licensee for such period of time that the commissioner deems necessary;

568 (2) to prohibit the person from applying for or obtaining a license from the commissioner
569 for a period up to thirty-six months following the effective date of an order issued under
570 subsection (b) or (c); or

571

572 (3) to prohibit such person from any further participation, in any manner, in the conduct
573 of the affairs of person or entity engaged in the cashing of checks, drafts or money orders in
574 Massachusetts or to prohibit such person from being employed by, an agent of, or operating on
575 behalf of a licensee under this chapter or any other business which requires a license from the
576 commissioner.

577 (b) A written notice issued under subsection (a) shall contain a written statement of the
578 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
579 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
580 upon the commissioner of such request for a hearing. If such person fails to submit a request for
581 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
582 appear in person or by a duly authorized representative, such party shall be deemed to have
583 consented to the issuance of an order of such prohibition in accordance with the notice.

584 (c) In the event of such consent under subsection (b), or if after a hearing the
585 commissioner finds that any of the grounds specified in such notice have been established, the
586 commissioner may issue an order of prohibition in accordance with subsection (a) as the
587 commissioner finds appropriate.

588 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
589 person. The commissioner shall also serve a copy of the order upon the licensee of which the
590 person is an employee or on whose behalf the person is performing. The order shall remain in
591 effect and enforceable until it is modified, terminated, suspended, or set aside by the
592 commissioner or a court of competent jurisdiction.

593 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
594 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
595 part in the conduct of the affairs of a person or entity engaged in the cashing of checks, drafts or
596 money orders in Massachusetts may not, while such order is in effect, continue or commence to
597 perform in the capacity of a principal employee, or otherwise participate in any manner, if so
598 prohibited by order of the commissioner, in the conduct of the affairs of:

599 (1) any licensee under this chapter;

600 (2) any other business which requires a license from the commissioner; and

601 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
602 subsidiary thereof.

603 SECTION 25. Section 1 of chapter 255B of the General Laws, as so appearing, is hereby
604 amended by striking out the definition of “Sales finance company” and inserting in place thereof
605 the following definition:— "Sales finance company",. (1) a bank as defined in section one of
606 chapter one hundred and sixty-seven, a national banking association, federal savings bank,
607 federal savings and loan association, federal credit union, or any bank, trust company, savings
608 bank, savings and loan association or credit union organized under the laws of any other state of
609 the United States, or any subsidiary of the above;

610 (2) any person engaged, in whole or in part, in the business of purchasing retail
611 installment contracts from one or more retail sellers; and

612 (3) a retail seller engaged, in whole or in part, in the business of holding retail installment
613 contracts acquired from retail buyers. The term "sales finance company" does not include the
614 pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

615 SECTION 26. Section 2 of chapter 255B, as so appearing, is hereby amended by striking
616 out the fourth, fifth, sixth, seventh and eighth sentences and inserting in place thereof the
617 following six sentences:—

618 Each license shall state the address at which the business is to be conducted and shall
619 state the name of the licensee. If a licensee intends to carry on such business at any place in
620 addition to the address on the license, he shall so notify the commissioner, in writing, at least 30
621 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as
622 determined by the commissioner. Such notice shall contain the address of any such additional

623 location and such other information as the commissioner may require; provided, however, that
624 any such business shall at all times be conducted in the name of the licensee as it appears on the
625 license. A copy of such license shall be posted as determined by the commissioner. Such copies
626 for places of business at addresses other than that appearing on the license may be obtained at a
627 reasonable cost, as determined by the commissioner. Such license shall not be transferable or
628 assignable and shall expire annually on a date determined by the commissioner.

629 SECTION 27. Section 3 of chapter 255B of the General Laws, as so appearing, is hereby
630 further amended by striking out the words "April fifteenth" in line 47 and inserting in place
631 thereof the words:— a date to be determined by the commissioner.

632 SECTION 28. Section 4 of said chapter 255B of the General Laws, as so appearing, is
633 hereby amended by adding the following sentence:— Each day such violation occurs or
634 continues shall be deemed a separate offense.

635 SECTION 29. Chapter 255B of the General Laws, as so appearing, is hereby amended by
636 striking out section 7, and inserting in place thereof the following section:—

637 Section 7. The commissioner may suspend or revoke any license issued pursuant to this
638 chapter if said commissioner finds that:

639 (i) the licensee has violated any provision of this chapter or any rule or regulation
640 adopted hereunder, or any other law applicable to the conduct of its business; or

641 (ii) any fact or condition exists which, if it had existed at the time of the original
642 application for such license, would have warranted the commissioner in refusing to issue such
643 license.

644 Except as provided in section eight, no license shall be revoked or suspended except after
645 notice and a hearing thereon pursuant to chapter thirty A.

646 A licensee may surrender a license by delivering to the commissioner written notice that
647 it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability
648 of the licensee for acts committed before such surrender.

649 No revocation, suspension or surrender of any license shall impair or affect the obligation
650 of any pre-existing lawful contract between the licensee and any person.

651 SECTION 30. Chapter 255B of the General Laws, as so appearing, is hereby amended by
652 striking out section 8 and inserting in place thereof the following two sections:—

653 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for
654 a hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
655 violation of a provision of this chapter or a rule, regulation or order hereunder, he may order

656 such licensee to cease and desist from such unlawful act or practice and take such affirmative
657 action as in his judgment will effect the purposes of this chapter.

658 (b) If the commissioner makes written findings of fact that the public interest will be
659 irreparably harmed by delay in issuing an order under subsection (a) he may issue a temporary
660 cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner
661 shall promptly notify, in writing, the licensee affected thereby that such order has been so
662 entered, the reasons therefor, and that within twenty days after the receipt of a written request
663 from such licensee, the matter will be scheduled for a hearing to determine whether or not such
664 temporary order shall become permanent and final. If no such hearing is requested and none is
665 ordered by the commissioner, the order shall remain in effect until it is modified or vacated by
666 the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of
667 and opportunity for a hearing to the licensee subject to said order, shall, by written finding of
668 facts and conclusions of law, vacate, modify or make permanent the order.

669 (c) No order under this section, except an order issued pursuant to subsection (b), may be
670 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
671 modify an order under this section upon finding that the conditions which required such an order
672 have changed and that it is in the public interest to so vacate or modify.

673 Any order issued pursuant to this section shall be subject to review as provided in chapter
674 thirty A.

675 Section 8A. The commissioner may enforce the provisions of this chapter, or restrain any
676 violations thereof, by filing a civil action in any court of competent jurisdiction.

677 SECTION 31. Chapter 255B of the General Laws, as so appearing, is hereby amended
678 by striking out section 21 and inserting in place thereof the following section:—

679 Section 21. Whoever violates any provision of this chapter or any rule or regulation
680 made thereunder by the commissioner shall be punished by a fine of not more than one thousand
681 dollars or by imprisonment for not more than six months, or both. The penalty provision of this
682 section shall be in addition to, and not in lieu of, any other provision of law applicable to a
683 licensee or other person for violating provision of this chapter or any rule or regulation made
684 thereunder.

685 SECTION 32. Chapter 255B of the General Laws, as so appearing, is hereby amended
686 by adding after section 25 the following two sections:—

687 Section 26. (a) Whenever the commissioner finds that any licensee or exempt
688 person under section two of this chapter has violated any provision of this chapter or any rule or
689 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
690 of the business of a sales finance company, the commissioner may, by order, in addition to any

691 other action authorized under this chapter or any rule or regulation made thereunder, impose a
692 penalty upon such person which shall not exceed five thousand dollars for each violation, up to a
693 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
694 commissioner may impose a penalty which shall not exceed five thousand dollars for each
695 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
696 licensee or exempt person under section two of this chapter, plus the costs of investigation.

697 (b) Nothing in this section shall limit the right of any individual or entity who has
698 been injured as a result of any violation of this chapter by a licensee, or any person other than a
699 licensee or exempt person under section two of this chapter, to bring an action to recover
700 damages or restitution in a court of competent jurisdiction.

701 (c) Any findings or order issued by the commissioner pursuant to this section shall
702 be subject to review as provided in chapter thirty A.

703 Section 27. (a) Whenever the commissioner determines that any person has, directly or
704 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
705 applicable to the conduct of the business of a sales finance company; or any order issued by the
706 commissioner under this chapter or any written agreement entered between such licensee and the
707 commissioner; the commissioner may serve upon such person a written notice of intention:

708 (1) to prohibit such person from performing in the capacity of a principal employee on
709 behalf of any licensee for such period of time that the commissioner deems necessary;

710 (2) to prohibit the person from applying for or obtaining a license from the commissioner
711 for a period up to thirty-six months following the effective date of an order issued under
712 subsection (b) or (c); or

713

714 (3) to prohibit such person from any further participation, in any manner, in the conduct
715 of the affairs of a sales finance company in Massachusetts or to prohibit such person from being
716 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
717 business which requires a license from the commissioner.

718 (b) A written notice issued under subsection (a) shall contain a written statement of the
719 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
720 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
721 upon the commissioner of such request for a hearing. If such person fails to submit a request for
722 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
723 appear in person or by a duly authorized representative, such party shall be deemed to have
724 consented to the issuance of an order of such prohibition in accordance with the notice.

725 (c) In the event of such consent under subsection (b), or if after a hearing the
726 commissioner finds that any of the grounds specified in such notice have been established, the
727 commissioner may issue an order of prohibition in accordance with subsection (a) as the
728 commissioner finds appropriate.

729 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
730 person. The commissioner shall also serve a copy of the order upon the licensee of which the
731 person is an employee or on whose behalf the person is performing. The order shall remain in
732 effect and enforceable until it is modified, terminated, suspended, or set aside by the
733 commissioner or a court of competent jurisdiction.

734 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
735 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
736 part in the conduct of the affairs of a sales finance company in Massachusetts may not, while
737 such order is in effect, continue or commence to perform in the capacity of a principal employee,
738 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
739 conduct of the affairs of:

740 (1) any licensee under this chapter;

741 (2) any other business which requires a license from the commissioner; and

742 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
743 subsidiary thereof.

744 SECTION 33. Chapter 255C of the General Laws, as so appearing, is hereby amended
745 by striking out section 2 and inserting in place thereof the following section:—

746 Section 2. No person, other than a bank as defined in section one of chapter one hundred
747 sixty-seven, a national banking association, a federally-chartered credit union, a federal savings
748 and loan association, a federal savings bank, or any subsidiary of the above, or a bank, a trust
749 company, savings bank, savings and loan association or credit union organized under the laws of
750 any other state, or any subsidiary of the above, a sales finance company, as defined in section
751 one of chapter two hundred fifty-five B, and a company licensed to carry on the business of
752 making small loans, shall engage in the business of premium finance agency unless licensed by
753 the commissioner, as provided in section three; provided, however, that no property and casualty
754 insurance agent or broker, including an insurance agent or insurance broker conducting an
755 insurance premium financing agency business under a subsidiary or different company name,
756 who provides premium financing only to his own customers for purposes of financing payment
757 of premiums on contracts of insurance, which contracts of insurance are exclusively limited to
758 commercial insurance policies, shall be required to be licensed pursuant to this section or any
759 other section of this chapter. The commissioner may adopt, amend or repeal rules and

760 regulations, which may include an adequate capitalization requirement for sales finance
761 companies, to aid in the administration and enforcement of this chapter.

762 Such license shall allow the holder to maintain only one office from which said business
763 may be conducted, but more than one license may be issued to any person. Any change of
764 location of an office of a licensee shall require the prior approval of the commissioner. Such
765 request for relocation shall be in writing setting forth the reason or reasons for the request, and
766 shall be accompanied by a relocation investigation fee of $50. If an applicant has more than one
767 office, he may obtain a license for each office from which he intends to conduct said business.

768 SECTION 34. Section 3 of said chapter 255C of the General Laws, as so appearing, is
769 hereby amended by striking out the last sentence and inserting in place thereof the following
770 sentence:— Each license shall be issued annually as of a date determined by the commissioner
771 and shall remain in full force and effect unless suspended, revoked or surrendered as provided in
772 section five.

773 SECTION 35. Section 4 of chapter 255C, as so appearing, is hereby amended by striking
774 out the first two sentences and inserting in place thereof the following six sentences:—

775 Each license shall state the address at which the business is to be conducted and shall
776 state the name of the licensee. If a licensee intends to carry on such business at any place in
777 addition to the address on the license, he shall so notify the commissioner, in writing, at least 30
778 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as
779 determined by the commissioner. Such notice shall contain the address of any such additional
780 location and such other information as the commissioner may require; provided, however, that
781 any such business shall at all times be conducted in the name of the licensee as it appears on the
782 license. A copy of such license shall be posted as determined by the commissioner. Such copies
783 for places of business at addresses other than that appearing on the license may be obtained at a
784 reasonable cost, as determined by the commissioner. Such license shall not be transferable or
785 assignable and shall expire annually on a date determined by the commissioner.

786 SECTION 36. Chapter 255C of the General Laws, as so appearing, is hereby amended
787 by striking out section 5, and inserting in place thereof the following three sections:—

788 Section 5. The commissioner may suspend or revoke any license issued pursuant to this
789 chapter if said commissioner finds that:

790 (i) the licensee has violated any provision of this chapter or any rule or regulation
791 adopted hereunder, or any other law applicable to the conduct of its business; or

792 (ii) any fact or condition exists which, if it had existed at the time of the original
793 application for such license, would have warranted the commissioner in refusing to issue such
794 license.

795 The commissioner shall have sufficient cause to suspend or revoke a license whenever he
796 learns from the commissioner of insurance or from any other source that the licensee has failed
797 to return the full amount of a return premium to the person whose insurance policy has been
798 cancelled or to his assignee, as required by section one hundred and seventy-six A of chapter one
799 hundred and seventy-five.

800 A licensee may surrender a license by delivering to the commissioner written notice that
801 it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability
802 of the licensee for acts committed before such surrender. A revocation or suspension or surrender
803 of any license shall not impair or affect the obligation of an insured under any lawful premium
804 finance agreement previously acquired or held by the licensee.

805 No revocation, suspension or surrender of any license shall impair or affect the obligation
806 of any pre-existing lawful contract between the licensee and any person.

807 Whenever the commissioner revokes or suspends a license, he shall forthwith execute in
808 duplicate a written order to that effect, and shall file one copy of such order in the office of the
809 secretary of state and mail one copy to the licensee. A suspension or revocation of a license shall
810 not be subject to the provisions of chapter thirty A.

811 Section 5A. (a) If the commissioner determines, after giving notice of and opportunity for
812 a hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
813 violation of a provision of this chapter or a rule, regulation or order hereunder, he may order
814 such licensee to cease and desist from such unlawful act or practice and take such affirmative
815 action as in his judgment will effect the purposes of this chapter.

816 (b) If the commissioner makes written findings of fact that the public interest will be
817 irreparably harmed by delay in issuing an order under subsection (a) he may issue a temporary
818 cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner
819 shall promptly notify, in writing, the licensee affected thereby that such order has been so
820 entered, the reasons therefor, and that within twenty days after the receipt of a written request
821 from such licensee, the matter will be scheduled for hearing to determine whether or not such
822 temporary order shall become permanent and final. If no such hearing is requested and none is
823 ordered by the commissioner, the order shall remain in effect until it is modified or vacated by
824 the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of
825 and opportunity for a hearing to the licensee subject to said order, shall, by written finding of
826 facts and conclusions of law, vacate, modify or make permanent the order.

827 (c) No order under this section, except an order issued pursuant to subsection (b), may be
828 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
829 modify an order under this section upon finding that the conditions which required such an order
830 have changed and that it is in the public interest to so vacate or modify.

831 Any order issued pursuant to this section shall be subject to review as provided in chapter
832 thirty A.

833 Section 5B. The commissioner may enforce the provisions of this chapter, or restrain any
834 violations thereof, by filing a civil action in any court of competent jurisdiction.

835 SECTION 37. Section 6 of chapter 255C of the General Laws, as so appearing, is hereby
836 further amended by striking out the words "April fifteenth" in line 57 and inserting in place
837 thereof the words:— a date to be determined by the commissioner.

838 SECTION 38. Section 9 of chapter 255C of the General Laws, as so appearing, is hereby
839 amended by striking out the first paragraph and inserting in place thereof the following
840 paragraph:—

841 Whoever violates any provision of this chapter, or knowingly makes any incorrect
842 statement of a material fact in any application, report or statement filed pursuant to this chapter,
843 or knowingly omits to state any material fact necessary to give the commissioner any
844 information lawfully required by him or refuses to permit any lawful investigation or
845 examination, shall be punished by a fine of not more than one thousand dollars or by
846 imprisonment for not more than six months, or both. The penalty provision of this section shall
847 be in addition to, and not in lieu of, any other provision of law applicable to a licensee or other
848 person for violating any provision of this chapter or any rule or regulation made thereunder.

849 SECTION 39. Chapter 255C of the General Laws, as so appearing, is hereby amended
850 by adding after section 23 the following two sections:—

851 Section 24. (a) Whenever the commissioner finds that any licensee or exempt
852 person under section two of this chapter has violated any provision of this chapter or any rule or
853 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
854 of the business of a premium finance agency, the commissioner may, by order, in addition to any
855 other action authorized under this chapter or any rule or regulation made thereunder, impose a
856 penalty upon such person which shall not exceed five thousand dollars for each violation, up to a
857 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
858 commissioner may impose a penalty which shall not exceed five thousand dollars for each
859 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
860 licensee or exempt person under section two of this chapter, plus the costs of investigation.

861 (b) Nothing in this section shall limit the right of any individual or entity who has
862 been injured as a result of any violation of this chapter by a licensee, or any person other than a
863 licensee or exempt person under section two of this chapter, to bring an action to recover
864 damages or restitution in a court of competent jurisdiction.

865 (c) Any findings or order issued by the commissioner pursuant to this section shall
866 be subject to review as provided in chapter thirty A.

867 Section 25. (a) Whenever the commissioner determines that any person has, directly or
868 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
869 applicable to the conduct of the business of a premium finance agency; or any order issued by
870 the commissioner under this chapter or any written agreement entered between such licensee and
871 the commissioner; the commissioner may serve upon such person a written notice of intention:

872 (1) to prohibit such person from performing in the capacity of a principal employee on
873 behalf of any licensee for such period of time that the commissioner deems necessary;

874 (2) to prohibit the person from applying for or obtaining a license from the commissioner
875 for a period up to thirty-six months following the effective date of an order issued under
876 subsection (b) or (c); or

877

878 (3) to prohibit such person from any further participation, in any manner, in the conduct
879 of the affairs of a premium finance agency in Massachusetts or to prohibit such person from
880 being employed by, an agent of, or operating on behalf of a licensee under this chapter or any
881 other business which requires a license from the commissioner.

882 (b) A written notice issued under subsection (a) shall contain a written statement of the
883 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
884 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
885 upon the commissioner of such request for a hearing. If such person fails to submit a request for
886 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
887 appear in person or by a duly authorized representative, such party shall be deemed to have
888 consented to the issuance of an order of such prohibition in accordance with the notice.

889 (c) In the event of such consent under subsection (b), or if after a hearing the
890 commissioner finds that any of the grounds specified in such notice have been established, the
891 commissioner may issue an order of prohibition in accordance with subsection (a) as the
892 commissioner finds appropriate.

893 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
894 person. The commissioner shall also serve a copy of the order upon the licensee of which the
895 person is an employee or on whose behalf the person is performing. The order shall remain in
896 effect and enforceable until it is modified, terminated, suspended, or set aside by the
897 commissioner or a court of competent jurisdiction.

898 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
899 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in

900 part in the conduct of the affairs of a premium finance agency in Massachusetts may not, while
901 such order is in effect, continue or commence to perform in the capacity of a principal employee,
902 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
903 conduct of the affairs of:

904 (1) any licensee under this chapter;

905 (2) any other business which requires a license from the commissioner; and

906 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
907 subsidiary thereof.

908 SECTION 40. Section 1 of chapter 255D of the General Laws, as so appearing, is hereby
909 amended by striking out the definition of “Sales finance company” in lines 91 through 98,
910 inclusive, and inserting in place thereof the following definition:—

911 "Sales finance company",

912 (1) a bank as defined in section one of chapter one hundred and sixty-seven, or a national
913 banking association or a savings and loan association, federal savings bank, federal savings and
914 loan association, federal credit union, or any bank, trust company, savings bank, savings and
915 loan association or credit union organized under the laws of any other state of the United States,
916 or any subsidiary of the above,

917 (2) any person other than an installment seller engaged, in whole or in part, in the
918 business of purchasing retail installment sale agreements or revolving credit agreements of one
919 or more retail sellers. The term "sales finance company" shall not include the pledgee of an
920 aggregate number of such agreements to secure a bona fide loan thereon.

921 SECTION 41. The first paragraph of section 2 of chapter 255D, as so appearing, is
922 hereby amended by striking out the fourth and fifth sentences and inserting in place thereof the
923 following six sentences:—

924 Each license shall state the address at which the business is to be conducted and shall
925 state the name of the licensee. If a licensee intends to carry on such business at any place in
926 addition to the address on the license, he shall so notify the commissioner, in writing, at least 30
927 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as
928 determined by the commissioner. Such notice shall contain the address of any such additional
929 location and such other information as the commissioner may require; provided, however, that
930 any such business shall at all times be conducted in the name of the licensee as it appears on the
931 license. A copy of such license shall be posted as determined by the commissioner. Such copies
932 for places of business at addresses other than that appearing on the license may be obtained at a
933 reasonable cost, as determined by the commissioner. Such license shall not be transferable or
934 assignable and shall expire annually on a date determined by the commissioner.

935 SECTION 42. Section 2 of chapter 255D, as so appearing, is hereby further amended by
936 striking out the ninth sentence.

937 SECTION 43. Section 3 of chapter 255D of the General Laws, as so appearing, is hereby
938 further amended by striking out the words "April fifteenth" in line 48 and inserting in place
939 thereof the words:— a date to be determined by the commissioner.

940 SECTION 44. Chapter 255D of the General Laws, as so appearing, is hereby amended by
941 striking out section 7 as so appearing, and inserting in place thereof the following section:—

942 Section 7. The commissioner may suspend or revoke any license issued pursuant to this
943 chapter if said commissioner finds that:

944 (i) the licensee has violated any provision of this chapter or any rule or regulation
945 adopted hereunder, or any other law applicable to the conduct of its business; or

946 (ii) any fact or condition exists which, if it had existed at the time of the original
947 application for such license, would have warranted the commissioner in refusing to issue such
948 license.

949 Except as provided in section eight, no license shall be revoked or suspended except after
950 notice and a hearing thereon pursuant to chapter thirty A.

951 A licensee may surrender a license by delivering to the commissioner written notice that
952 it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability
953 of the licensee for acts committed before such surrender.

954 No revocation, suspension or surrender of any license shall impair or affect the obligation
955 of any pre-existing lawful contract between the licensee and any person.

956 SECTION 45. Said chapter 255D of the General Laws, as so appearing, is hereby further
957 amended by striking out section 8, as so appearing, an inserting in place thereof the following
958 two sections:—

959 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for
960 a hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
961 violation of a provision of this chapter or a rule, regulation or order hereunder, he may order
962 such licensee to cease and desist from such unlawful act or practice and take such affirmative
963 action as in his judgment will effect the purposes of this chapter.

964 (b) If the commissioner makes written findings of fact that the public interest will be
965 irreparably harmed by delay in issuing an order under subsection (a) he may issue a temporary
966 cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner
967 shall promptly notify, in writing, the licensee affected thereby that such order has been so
968 entered, the reasons therefor, and that within twenty days after the receipt of a written request

969 from such licensee, the matter will be scheduled for hearing to determine whether or not such
970 temporary order shall become permanent and final. If no such hearing is requested and none is
971 ordered by the commissioner, the order shall remain in effect until it is modified or vacated by
972 the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of
973 and opportunity for a hearing to the licensee subject to said order, shall, by written finding of
974 facts and conclusions of law, vacate, modify or make permanent the order.

975 (c) No order under this section, except an order issued pursuant to subsection (b), may be
976 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
977 modify an order under this section upon finding that the conditions which required such an order
978 have changed and that it is in the public interest to so vacate or modify.

979 Any order issued pursuant to this section shall be subject to review as provided in chapter
980 thirty A.

981 Section 8A. The commissioner may enforce the provisions of this chapter, or restrain any
982 violations thereof, by filing a civil action in any court of competent jurisdiction.

983 SECTION 46. Chapter 255D of the General Laws, as so appearing, is hereby amended
984 by striking out section 30 and inserting in place thereof the following section:—

985 Section 30. Whoever violates any provision of this chapter shall be punished by a fine of
986 not more than one thousand dollars or by imprisonment for not more than six months, or both.
987 The penalty provision of this section shall be in addition to, and not in lieu of, any other
988 provision of law applicable to a licensee or other person for violating section two or any rule or
989 regulation made thereunder.

990 SECTION 47. Chapter 255D of the General Laws, as so appearing, is hereby amended
991 by adding after section 31 the following two sections:—

992 Section 32. (a) Whenever the commissioner finds that any licensee or exempt
993 person under section two of this chapter has violated any provision of this chapter or any rule or
994 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
995 of the business of a sales finance company, the commissioner may, by order, in addition to any
996 other action authorized under this chapter or any rule or regulation made thereunder, impose a
997 penalty upon such person which shall not exceed five thousand dollars for each violation, up to a
998 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
999 commissioner may impose a penalty which shall not exceed five thousand dollars for each
1000 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
1001 licensee or exempt person under section two of this chapter, plus the costs of investigation.

1002 (b) Nothing in this section shall limit the right of any individual or entity who has
1003 been injured as a result of any violation of this chapter by a licensee, or any person other than a

1004 licensee or exempt person under section two of this chapter, to bring an action to recover
1005 damages or restitution in a court of competent jurisdiction.

1006 (c) Any findings or order issued by the commissioner pursuant to this section shall be
1007 subject to review as provided in chapter thirty A.

1008 Section 33. (a) Whenever the commissioner determines that any person has, directly or
1009 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
1010 applicable to the conduct of the business of a sales finance company; or any order issued by the
1011 commissioner under this chapter or any written agreement entered between such licensee and the
1012 commissioner; the commissioner may serve upon such person a written notice of intention:

1013 (1) to prohibit such person from performing in the capacity of a principal employee on
1014 behalf of any licensee for such period of time that the commissioner deems necessary;

1015 (2) to prohibit the person from applying for or obtaining a license from the commissioner
1016 for a period up to thirty-six months following the effective date of an order issued under
1017 subsection (b) or (c); or

1018

1019 (3) to prohibit such person from any further participation, in any manner, in the conduct
1020 of the affairs of a sales finance company in Massachusetts or to prohibit such person from being
1021 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
1022 business which requires a license from the commissioner.

1023 (b) A written notice issued under subsection (a) shall contain a written statement of the
1024 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
1025 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
1026 upon the commissioner of such request for a hearing. If such person fails to submit a request for
1027 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
1028 appear in person or by a duly authorized representative, such party shall be deemed to have
1029 consented to the issuance of an order of such prohibition in accordance with the notice.

1030 (c) In the event of such consent under subsection (b), or if after a hearing the
1031 commissioner finds that any of the grounds specified in such notice have been established, the
1032 commissioner may issue an order of prohibition in accordance with subsection (a) as the
1033 commissioner finds appropriate.

1034 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
1035 person. The commissioner shall also serve a copy of the order upon the licensee of which the
1036 person is an employee or on whose behalf the person is performing. The order shall remain in
1037 effect and enforceable until it is modified, terminated, suspended, or set aside by the
1038 commissioner or a court of competent jurisdiction.

1039 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
1040 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
1041 part in the conduct of the affairs of a sales finance company in Massachusetts may not, while
1042 such order is in effect, continue or commence to perform in the capacity of a principal employee,
1043 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
1044 conduct of the affairs of:

1045 (1) any licensee under this chapter;

1046 (2) any other business which requires a license from the commissioner; and

1047 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
1048 subsidiary thereof.