

HOUSE No. 4901

Substituted by the House, on motion of Mr. Mariano of Quincy, for a bill with the same title (House, No. 1044). June 30, 2008.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT CLARIFYING CERTAIN BANKING LAWS.

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

1 SECTION 1. Chapter 168 of the General Laws is hereby
2 amended by striking out section 9A, as appearing in the 2006
3 Official Edition, and inserting in place thereof the following
4 section:—

5 Section 9A. The annual meeting of the corporators of such cor-
6 poration shall be held at such time as the by-laws direct. Special
7 meetings may be held by order of the trustees or upon written
8 request of the 10 corporators addressed to the clerk who shall give
9 notice of special meetings upon such order or request. In the
10 absence or inability of the clerk to serve, the president or a vice
11 president may give the notice or notices required by this section.
12 At least 7 days before the date of such meeting, notice of the
13 meeting shall be given by mailing to each corporator a written or
14 printed notice thereof. The names of those present at meetings
15 shall be entered in the records of the corporation. A quorum shall
16 consist of not less than 13 incorporators or 25 per cent of the total
17 number of corporators, whichever is the greater; provided, how-
18 ever, that not more than 50 corporators shall be necessary to con-
19 stitute a quorum.

1 SECTION 2. Section 11 of said chapter 168, as so appearing,
2 is hereby amended by striking out paragraph 3 and inserting in
3 place thereof the following paragraph:—

4 3. Report of Payments. — The treasurer shall report at each
5 regular meeting, in detail, all amounts paid by the corporation
6 since the last regular meeting for services, fees or otherwise, to
7 any member of the board of trustees and all increases in salaries
8 of officers granted since the last regular meeting; and shall report
9 annually, at the first regular meeting of the trustees, following the
10 annual meeting, the salaries, including bonuses if any, of all offi-
11 cers.

1 SECTION 3. Said chapter 168 is hereby further amended by
2 striking out section 12, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 12. The corporation shall have a board of investment of
5 not less than 5 members, who shall be trustees of the corporation.
6 Only 1 of the persons holding the offices or performing the duties
7 of president, executive vice president, senior vice president or
8 treasurer shall at the same time be a member of the board of
9 investment. The board shall elect a clerk who may, but need not
10 be a member of the board. The board of investment may invite 1
11 or more trustees who are not members of the board to attend its
12 meetings during the monthly, quarterly or semi-annual periods as
13 the board may determine.

14 At least quarterly, the treasurer or other officer designated by
15 the board of investment shall submit to the board of investment, a
16 written report, over his signature, covering the period for which
17 the report has not yet been submitted. The report shall be filed
18 with the records of the meeting and shall be retained for a period
19 of 6 years from the date of the meeting. The report shall cover the
20 following transactions:

- 21 (1) changes in investments;
- 22 (2) changes in reserve or contingency accounts;
- 23 (3) lists of the following loans, setting forth the total liabilities
24 of the borrower to the corporation, both secured and unsecured:—
 - 25 (i) loans in excess of \$50,000 each, overdue for more than 30
26 days, other than real estate mortgage loans, but for a bank with
27 total assets in excess of \$1,000,000,000 as of its most recent call
28 report, loans reportable in this category shall be those in excess of
29 \$100,000, and for a bank with total assets in excess of
30 \$10,000,000,000 as of its most recent call report, loans reportable
31 shall be those in excess of \$1,000,000;

32 (ii) real estate mortgage loans on which interest is more than 6
33 months in arrears;

34 (iii) real estate mortgage loans concerning which any tax upon
35 the underlying security has been paid by and not repaid to the cor-
36 porations; and

37 (iv) all loans secured and unsecured, and discounts of any bor-
38 rower including both direct and indirect liabilities made during
39 which the period which brings aggregate liabilities of the bor-
40 rower to an amount in excess of \$100,000, with annotation of any
41 line of credit possessed by the borrower, but, for a bank with total
42 assets in excess of \$1,000,000,000 as of its most recent call report,
43 the reportable threshold amount of aggregate liabilities out-
44 standing to a single borrower shall be the greater of \$500,000 or 1
45 per cent of undistributed capital and surplus.

46 Upon application in writing by the corporation, the commis-
47 sioner in his discretion may waive or modify the list of transac-
48 tions to be included in the report.

49 Meetings of the board of investment shall be held at least once
50 in each month. A record shall be made at each meeting of the
51 transactions of the board and of the names of those present.

1 SECTION 4. Section 13 of said chapter 168, as so appearing, is
2 hereby amended by striking out the second and third paragraphs
3 and inserting in place thereof the following 2 paragraphs:—

4 The president shall be a trustee. A vice president may perform
5 the duties of the president to the extent authorized in the by-laws.
6 The treasurer may at the same time be a vice president. A vice
7 treasurer or an assistant treasurer may perform all the duties of the
8 treasurer. The clerk shall be the clerk of the corporation and the
9 trustees.

10 No operating officer of the corporation shall hold the office or
11 perform the duties of president, vice president, cashier or treasurer
12 of a national banking association or a trust company, and such
13 operating officer shall be governed by the provisions of section 10
14 with respect to holding office in another savings bank or in a co-
15 operative bank or federal savings and loan association.

1 SECTION 5. Said chapter 168 is hereby further amended by
2 striking out section 15, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 15. Each person elected to office at the annual meeting
5 or at any other meeting of the incorporators or trustees, who is not
6 present at the meeting at which he was elected shall be notified, in
7 writing, of such election by the clerk of the corporation. Such
8 notice shall be sent within 10 days after such meeting to the last
9 known address of such person. Within 60 days after the annual
10 meeting, the clerk shall cause to be filed with the records of the
11 corporation a list containing the following information: (a) the
12 names of the incorporators indicating those who are trustees; and
13 (b) the names of the president, vice presidents, treasurer, members
14 of the board of investment, and members of the auditing com-
15 mittee referred to in section 16. A copy of said list shall be fur-
16 nished to the commissioner within 10 days after filing with the
17 records of the corporation.

1 SECTION 6. Section 11 of chapter 170 of the General Laws, as
2 so appearing, is hereby amended by striking out the second para-
3 graph and inserting in place thereof the following paragraph:—

4 The security committee shall perform such other duties as may
5 be required by law, and exercise such other powers as may be del-
6 egated to it by the board of directors. At each meeting of the
7 directors, the security committee or an officer designated by it
8 shall submit a report consisting of a detailed written statement
9 containing the following information for the reporting period run-
10 ning from the closing date of the last report through the end of the
11 calendar month immediately prior to the date of the meeting at
12 which the report is submitted, such report to be filed with the
13 records of the meeting and shall be retained for a period of 6 years
14 from the date of the meeting; such report shall include the
15 following:

- 16 (1) changes in reserve or contingency accounts;
- 17 (2) a list of all loans completed pursuant to power delegated by
18 the board of directors;
- 19 (3) lists of the following loans, setting forth the total liabilities
20 of the borrower to the corporation, both secured and unsecured:
 - 21 (i) loans in excess of \$50,000 each, overdue for more than 30
22 days, other than real estate mortgage loans, but for a bank with
23 total assets in excess of \$1,000,000,000 as of its most recent call
24 report, any loans reportable in this category shall be those in

25 excess of \$100,000, and for a bank with total assets in excess of
26 \$10,000,000,000 as of its most recent call report, any loans
27 reportable shall be those in excess of \$1,000,000;

28 (ii) real estate mortgage loans on which interest is more than 6
29 months in arrears;

30 (iii) real estate mortgage loans concerning which any tax upon
31 the underlying security has been paid by and not repaid to the cor-
32 poration; and

33 (iv) all loans secured and unsecured, and discounts of any bor-
34 rower including both direct and indirect liabilities made during the
35 reporting period which brings aggregate liabilities of the borrower
36 to an amount in excess of \$100,000, with annotation of any line of
37 credit possessed by the borrower, but, for a bank with total assets
38 in excess of \$1,000,000,000 as of its most recent call report, the
39 reportable threshold amount of aggregate liabilities outstanding to
40 a single borrower shall be the greater of \$500,000 or 1 per cent of
41 undistributed capital and surplus.

42 Upon application in writing by any such corporation the com-
43 missioner may waive or modify the information in clauses (1), (2)
44 and (3) to be included in such report.

1 SECTION 7. Said chapter 170 is hereby further amended by
2 striking out section 14, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 14. The commissioner shall have the same powers and
5 duties in respect to co-operative banks which he has in respect to
6 savings banks. At least once during each 12 months following
7 their election, and more often if required by the commissioner, the
8 audit committee, referred to in section 11, shall have an audit
9 made of the balance sheet of the corporation and such other finan-
10 cial statements as it may prescribe.

11 The audit shall be made by an independent certified public
12 accountant as set forth in the last paragraph of section 33 of
13 chapter 13 in accordance with generally accepted auditing stan-
14 dards and in such form and manner and at such time within said
15 12 months as the audit committee may prescribe. Within 30 days
16 after its election, the audit committee shall appoint an accountant
17 and written notice thereof shall be given to the commissioner.

18 The accountant shall report in writing to the audit committee
19 the results of the audit. At the next meeting of the directors there-
20 after, the audit committee shall render a report, which shall be
21 read and be signed by the committee, stating the nature, extent
22 and results of the audit and whether it accepts the accountant's
23 report.

24 The audit committee shall file with the commissioner a copy of
25 the accountant's report within 30 days after its receipt and main-
26 tain another copy with the records of the corporation. If the audit
27 committee fails to have an audit as herein provided, the commis-
28 sioner shall have an audit made by an independent certified public
29 accountant as set forth in the last paragraph of section 33 of
30 chapter 13 in such form and manner as the commissioner may pre-
31 scribe, and the expense thereof shall be paid by the corporation.

1 SECTION 8. The last paragraph of section 13 of chapter 172
2 of the General Laws, as so appearing, is hereby amended by
3 adding the following sentence:— An executive committee may
4 take any action that could be taken by the board of directors
5 except that an executive committee may not: (1) authorize divi-
6 dends or other distributions to shareholders; (2) approve or pro-
7 pose to the corporation's shareholders actions that require the
8 approval of the corporation's shareholders; (3) change the number
9 of members of the board of directors, remove directors from
10 office or fill vacancies on the board of directors; (4) amend the
11 corporation's articles of organization; (5) adopt, amend or repeal
12 the corporation's by-laws; (6) authorize or approve reacquisition
13 of shares of capital stock, except according to a formula or
14 method prescribed by the board of directors; (7) take any action
15 specifically required by law or regulation to be taken by the entire
16 board of directors; or (8) approve a transaction described in
17 section 38 of Chapter 172.

1 SECTION 9. Said chapter 172 is hereby further amended by
2 striking out section 16, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 16. The board of directors shall meet at intervals, that
5 shall not be less frequent than quarterly, but, upon application in
6 writing by the corporation, the commissioner may waive or

7 modify this requirement. Unless the articles of organization or the
8 by-laws otherwise provide, members of the board of directors or
9 any committee designated thereby may participate in a meeting of
10 such board or committee by means of a conference telephone or
11 similar communications equipment by means of which all persons
12 participating in the meeting may simultaneously hear each other,
13 and participation by such means shall constitute presence in
14 person at a meeting. Members may transmit any written autho-
15 rizations that may be required during the meeting by electronic
16 facsimile or other commercially acceptable transmission. At
17 intervals that shall not be less frequent than quarterly, the trea-
18 surer or any other officer designated by the board of directors
19 shall submit to a meeting of the board of directors, or to a meeting
20 of its executive committee, if the receipt of such reports has been
21 delegated by the board of directors to such committee, a written
22 report, over his signature, for the period running from the closing
23 date of the last report to a date not more than 18 days prior to the
24 date of the meeting at which the report is submitted. The report
25 shall be filed with the records of the meeting and shall be retained
26 for a period of 6 years from the date of the meeting. The report
27 shall provide a summary of the following transactions:

- 28 (1) changes in investments;
- 29 (2) changes in reserve or contingency accounts;
- 30 (3) lists of the following loans, setting forth total liabilities of
31 the borrower to the corporation, both secured and unsecured:
 - 32 (i) loans in excess of \$50,000 each, overdue for more than 30
33 days, other than real estate mortgage loans, but for a bank with
34 total assets in excess of \$1,000,000,000 as of its most recent call
35 report, loans reportable in this category shall be those in excess of
36 \$100,000, and for a bank with total assets in excess of
37 \$10,000,000,000 as of its most recent call report, loans reportable
38 shall be those in excess of \$1,000,000;
 - 39 (ii) real estate mortgage loans on which interest is more than 6
40 months in arrears;
 - 41 (iii) real estate mortgage loans concerning which any tax upon
42 the underlying security has been paid by the corporation and not
43 repaid to the corporation;
 - 44 (iv) all loans secured and unsecured, and discounts of any bor-
45 rower including both direct and indirect liabilities made during the

46 period which brings aggregate liabilities of such borrower to an
47 amount in excess of \$100,000, with a notation of any line of credit
48 possessed by the borrower, but, for a bank with total assets in
49 excess of \$1,000,000,000 as of its most recent call report, the
50 reportable threshold amount of aggregate liabilities outstanding to
51 a single borrower shall be the greater of \$500,000 or 1 per cent of
52 capital and surplus.

53 Upon application in writing by any such corporation the com-
54 missioner, in his discretion, may waive or modify the list of trans-
55 actions to be included in such report.