HOUSE . . . . . No. 14

The Commonwealth of Massachusetts

EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
OFFICE OF THE COMMISSIONER OF BANKS
LEVERETT SALTONSTALL BUILDING, GOVERNMENT CENTER
100 CAMBRIDGE STREET,
BOSTON, MASSACHUSETTS 02202, NOVEMBER 7, 1990

The Honorable Michael Joseph Connolly, *Secretary of State*
State House — Room 337, Boston, Massachusetts 02133

Dear Secretary Connolly:

In accordance with the provisions of section 33 of Chapter 30 of the General Laws, the Division of Banks herewith transmits thirteen recommendations for consideration by the General Court in 1991. Such recommendations are accompanied by drafts of bills embodying the legislation recommended and an explanation of each such proposal.

Respectfully submitted,

THOMAS J. CURRY,
Commissioner of Banks.

LEGISLATIVE RECOMMENDATIONS OF THE DIVISION OF BANKS

1. AN ACT RELATIVE TO THE LICENSING AND EXAMINATION OF CERTAIN FIRST MORTGAGE LENDERS AND BROKERS.

The Division of Banks is charged with the enforcement of a number of consumer protection statutes related to the granting of credit. In order to effectively enforce those measures, the Division must know who is extending or assisting in the extension of credit, where they are located and have access to their books and records. There currently exist in the Commonwealth active but unregulated entities involved in mortgage transactions throughout the Commonwealth which provide a significant share of the mortgage lending funds to our citizens. There is no evidence that this industry's performance is so superior to that of banks or other licensed lenders as to eliminate the need for oversight of its compliance with these consumer credit statutes.

This recommendation seeks authority for this Division to license and examine mortgage companies and brokers which make or negotiate five or more mortgage loans on residential property within a twelve month period. The provisions of the legislation are substantially similar to statutes governing other credit grantors which the Legislature has chosen to license and examine through this Division. Banks, licensed lenders, insurance companies and certain other entities would be exempt from this law. The licensing provisions are set out in section 3 while sections 1 and 2 delete certain references to mortgage brokers in the statute governing the registration of real estate brokers and salesmen. Section 4 governs implementation of the licensing procedure.

2. AN ACT RELATIVE TO CERTAIN AGGREGATE LOAN LIMITATIONS APPLICABLE TO A BANK OR CREDIT UNION.

In order to promote safety and soundness by preventing a concentration of assets, a bank is generally restricted in its involvement with any one entity to a maximum limit of 20% of the bank's capital. The existing law governing savings banks, co-operative banks and trust companies exempts most mortgage loans from being

calculated against the 20% limit. Section 3 of this recommendation seeks to reduce that broad exemption for those institutions by providing that only a loan on the one-to-four family owner-occupied property of the borrower would be exempt from the calculation of that aggregate limitation. Section 5 contains a grandfather clause which retains the exemption for other mortgage loans made while the existing statute was in effect.

Unlike the law governing other institutions, credit union law does not provide any exemption for mortgage loans from the existing statutory limit. Section 4 of this petition would provide such an exemption by eliminating the amount of a loan on a one-to-four family, owner-occupied property of the borrower from being calculated against that borrower's aggregate limit.

A review of the practical application of these current statutes has resulted in the filing of this legislation which is consistent with this Division's responsibilities relative to the safety and soundness of state-chartered banks yet recognizes the realities of today's real estate market and the varying sizes of our institutions.

Current statute further provides that the 20% of capital limit may be exceeded by an amount equal to 2% of savings deposits for loans secured by certain collateral. The Division believes the general 20% of capital limitation is consistent with sound banking and that such limitations should not be tied to the volatile base of deposits. This recommendation would eliminate from law the clauses in which the 2% of deposits authority is contained. Section 1 would negate that provision for stock corporations while section 2 would eliminate it for thrift institutions.

3. AN ACT RELATIVE TO CERTAIN ACTIONS OF THE BOARD OF BANK INCORPORATION.

Current statute allows the Commissioner of Banks to appoint the Federal Deposit Insurance Corporation ("FDIC") as liquidating agent of a state-chartered bank which it insures. In conjunction with that authority, the Board of Bank Incorporation is authorized to take certain actions under law without regard to notice of hearing requirements in order to assist in the resolution of such a situation. Section 1 of this recommendation seeks to update this statute to recognize the existing federal insurance coverage and the existence

of federally-chartered institutions in the Commonwealth. Accordingly, the law is amended to allow the Board to so act on an expedited basis regardless of whether the bank is state-chartered or federally-chartered; and to also allow the Commissioner to act without requirements of notice if a federal insurer has been named liquidating agent.

Presently, all state-chartered savings banks and co-operative banks have their deposits insured by the federal deposit insurance corporation ("FDIC"). Sections 3 and 5 of this recommendation, governing savings banks and co-operative banks, respectively, would require any newly-chartered savings bank or co-operative bank to be so insured before being authorized by the Board to begin business. In conjunction with that additional requirement, section 2 for savings banks and section 4 for co-operative banks would increase from six months to one year the time period in which a new institution must complete all requirements in order to transact business. The provisions contained in sections 2 to 5, inclusive, of this recommendation are consistent with the current statutes applicable to the formation of a state-chartered trust company.

4. AN ACT RELATIVE TO THE IMPLEMENTATION OF CERTAIN BANKING LAWS.

With the conversion of a number of state-chartered banks from mutual to stock corporations as well as those banks which have been recently chartered, more institutions are governed by the statute governing the payment of dividends by banks in stock form. That statute, section 28 of chapter 172 of the General Laws, has not been updated for many years. Section 2 of this recommendation would rewrite that law to clarify the timing and payment of dividends and the base upon which such dividends are to be calculated. Certain terms are also now defined within that statute.

State-chartered savings banks, co-operative banks and trust companies are allowed under the leeway law, so called, to make any investment not otherwise authorized by law. Section 1 of this legislation amends the leeway law to limit the amount invested or loaned to any person under this statute to ten percent of its capital stock, surplus account and undivided profits if a stock corporation and ten percent of surplus if a mutual institution. The recommendation would

also require a bank to file a written notice of the particulars of the investment with the Division. The notice must be submitted thirty days in advance of the investment.

Chapter 485 of the Acts of 1984 established the Thrift Institutions Fund for Economic Development. Among other things, the purpose of the Fund is to create and retain jobs in the Commonwealth through loans to mature and developing industries. The Fund's resources are drawn, pro rata, from the savings banks, co-operative banks, federal savings and loan associations in Massachusetts. Currently, the Fund's call upon each institution is based upon the bank's assets. In order to more accurately make the calculation, section 3 seeks to change the base upon which the call is made from assets to deposits in the Commonwealth. At this time, the Division also seeks to change the timing of the call calculation from the present April 30th date. Since all banks in the Fund are now insured by funds of the Federal Deposit Insurance Corporation, each bank reports financial information on a quarterly basis. Therefore, current information for the call could be obtained, without any additional reporting requirement, by tying the call to one of the calendar quarter reporting dates. This recommendation suggests the consolidated report of income and condition filed with the appropriate regulator as of the close of business in December would be most appropriate. All other provisions of existing law are retained.

5. AN ACT RELATIVE TO THE OPERATION OF CERTAIN BANKING LAWS.

This recommendation seeks to address various matters which have confronted the Division in its efforts to implement or work within existing statutes. Although some provisions are substantive, the Division views the majority as technical measures.

Sections 4 and 6 of the recommendation, governing stock conversions of savings banks and co-operative banks, respectively, seek to substitute the process applicable to other state agencies for Legislative review of regulations for the existing cumbersome process now required for promulgation of stock conversion regulations. These sections also clarify the law relative to establishing an investigation fee for the Division's activities relative to such an application while also clarifying the applicability of certain laws after conversion.

Sections 3, 5, 7 and 10 applicable to savings banks, cooperative banks, credit unions and trust companies seek to clarify the statutes governing restrictions on interlocking directors and officers of such institutions. These amendments would specify that the existing laws would apply only to interlocking positions within banks which have their main office in the Commonwealth.

Sections 1 and 2 of this legislation seek to technically correct the cite of an aggregate investment limitation on certain bank stocks. Section 1 deletes the provision from the loan statute while section 2 properly inserts it into the investment law.

The remaining two sections of the recommendation affect only credit unions. Section 8 would establish a process in state law for a state-chartered credit union to convert to a federal charter while section 9 addresses mergers of state-chartered credit unions and federally-chartered credit unions.

6. AN ACT RELATIVE TO THE REORGANIZATION OF STATE-CHARTERED STOCK BANKS.

Prior to the passage of the regional interstate banking law in 1982 a state-chartered trust company could reorganize into a holding company structure pursuant to the provisions of section 4A of Chapter 167A which, among other things, required only the approval of the Commissioner of Banks. If the reorganization were to involve more than one such bank the matter would go before the Board of Bank Incorporation consistent with the general provisions of Chapter 167A which governs acquisitions by and formation of a bank holding company. In conjunction with the regional interstate law, the definition of banking institution was expanded to include all banks within the region. That definition, however, also became applicable to an internal reorganization pursuant to section 4A. As a consequence, the statutes could now require the Commissioner to pass upon a reorganization of an institution not otherwise subject to the jurisdiction of this Division. Moreover, the provisions of Section 4A could conflict with the governance provisions of federal law applicable to such institution.

This recommendation would address this situation by technically removing section 4A from Chapter 167A, section 1 of the bill, and inserting it, by section 4, into a law applicable only to state-chartered

trust companies. Sections 2 and 3 governing state-chartered savings banks and cooperative banks in stock form, respectively, would make this statute applicable to those institutions as well. All of the authorities of the Board of Bank Incorporation are retained by this recommendation.

7. AN ACT RELATIVE TO THE REGULATORY POWERS OF THE COMMISSIONER OF BANKS.

Under existing law, the Commissioner may call a meeting of a bank's board of directors or trustees for the purpose of giving said board directions and recommendation relative to the operation of the bank. Section 1 of this recommendation would clarify the Commissioner's authority to issue cease and desist order while requiring such orders to be issued pursuant to regulations promulgated by the Division of Banks.

The Commissioner is authorized to name a conservator of a trust company under the provisions of sections 40 to 47, inclusive, of chapter 172 of the General Laws. Section 2 of this legislation would insert the provisions of those eight sections of law into one statute within chapter 167 while section 3 would technically repeal those sections in chapter 172. The effect of this amendment is to allow the Commissioner to name a conservator for any state-chartered bank instead of only a trust company. That authority would give the Commissioner additional flexibility in addressing matters affecting savings banks or co-operative banks whether in mutual or stock form or a credit union.

If it were to appear to the Commissioner that a state-chartered savings bank was in an unsound or unsafe condition to transact the business for which it was organized, current law prevents him from turning possession and control of the bank over to the Mutual Savings Central Fund, Inc., the excess deposit insurer for each such bank. If, however, a cooperative bank was involved a separate law would allow the Commissioner to turn the operation of that bank over to the Co-operative Central Bank, the excess insurer for state-chartered cooperative banks. Section 4 of this recommendation amends the act governing the Mutual Savings Central Fund, Inc., to authorize the Commissioner to certify a savings bank to that Fund for operation by it or for the liquidation of the bank's affairs. This amendment

would give the Commissioner the same option in addressing matters in a savings bank that the law currently grants him for a cooperative bank.

8. AN ACT RELATIVE TO THE DISCLOSURE OF FEES OR CHARGES ASSESSED A CUSTOMER FOR USE OF AN ELECTRONIC BRANCH.

This recommendation seeks to provide customers who use electronic branches with clear and meaningful disclosure of the costs associated with each such transaction. The legislation requires initial disclosure on the terminal's screen that there may be charges incurred for use of the electronic branch. It would also require subsequent disclosure in the periodic statement for each account accessed on both a per transaction basis as well as on an aggregate basis per type of transaction. Any electronic fund transfer system or network fees or charges would also be required to be so disclosed.

9. AN ACT RELATIVE TO THE LIST OF LEGAL INVESTMENTS PREPARED BY THE COMMISSIONER OF BANKS.

Prior to the recodification and equalization of powers in the Massachusetts banking laws, the investment powers of various state-chartered financial institutions were tied to the legal list of investments for savings banks, so called. That list is to be prepared annually by this Division and is to include those obligations which meet statutory criteria or have been approved through a petitioning process also set out in law. The expanded investment powers for savings banks and cooperative banks which were included with the recodification eliminated their need to rely on the legal list. However, state-chartered credit unions still rely on the list and were substituted for savings banks as the body to initiate the petitioning process for certain new investments. The role of credit unions in that process has been stymied by the fact that their investment authorities are limited by their governing statute, Chapter 171.

Unlike in previous years, the Division has refiled this language as a separate recommendation due to increased focus on the need to address this issue. During the past several months the currency of the legal list has been questioned by legislators, credit unions, pension funds and investment advisors to various entities. Most of the

inquiries involve investment options that exist today which were not included in statute when the laws governing the legal list were frozen in place as they appeared on June 30, 1983 in conjunction with the recodification and equalization of the Massachusetts banking laws which occurred on July 1 of that year. That interest may result in additional petitions being filed or amendments being sought to this recommendation. For those reasons, the Division has isolated this issue in a separate bill.

10. AN ACT RELATIVE TO THE RECEIPT OF DEPOSITS FOR TRANSMITTAL TO FOREIGN COUNTRIES.

This recommendation seeks to rewrite the statutes governing people who engage or are financially interested in the business of receiving deposits of money, for the purpose of transmitting the same or equivalents to foreign countries. Those statutes are set out in chapter 169 of the General Laws which has not been substantively amended since 1949. The Division of Banks has responsibility under the statute for the licensing and examination of persons involved in this business. In previous sessions the Division sought limited amendments to update certain existing provisions.

During the last year or so this business has seen increased activity and additional scrutiny from the Division and other regulatory agencies. The nationalization of banks in Brazil disrupted transmissions to that country and resulted in money not being received by those to which it was sent. Additionally, compliance with currency transmittal reports continued to be a concern. These on-going developments caused the Division to review the outdated existing statute. Based upon that review, the Division has filed this recommendation to update the entire chapter. The recommendation incorporates language presently in statute governing other licensees of the Division. Currently, the Division is reviewing a model statute applicable to such foreign transmittal agencies used by other states. If that analysis revealed more appropriate language specific to this business, it would bring that information to the Committee's attention during the session.

11. AN ACT RELATIVE TO THE INVESTMENT IN CERTAIN BONDS AND OTHER EVIDENCES OF INDEBTEDNESS BY STATE CHARTERED BANKS.

State-chartered banks are presently authorized to invest in bonds and other evidences of indebtedness of corporations, and certain associations or trusts. The current statute does not specify any minimum standards relative to the quality of such bonds or indebtedness. The singular intent of this recommendation is to amend the existing law by adding a provision requiring any such bonds or other evidences of indebtedness to be at least investment grade as rated by a national rating service. This proposal would therefore restrict a bank's ability to invest in so-called junk bonds. Other investment authorities of banks are not affected by this recommendation.

12. AN ACT RELATIVE TO THE APPROVAL OF CERTAIN MERGERS OR ACQUISITIONS BY THE COMMISSIONER OF BANKS.

Under existing law, a merger or acquisition involving a state-chartered bank generally requires an application to and approval by the Commissioner of Banks before any such action can be consummated. Statutes passed in 1982 authorizing such transactions across both industry and federal/state chartering lines, recognized that the banks could have their deposits insured by different funds. Accordingly, those amendments required that arrangements satisfactory to each insurer had been made for the transaction prior to the Commissioner granting any approval. Today, however, all state-chartered banks are insured by the Federal Deposit Insurance Corporation ("FDIC"). Insurance funds existing for savings banks and cooperative banks remain as insurer of only the deposits in excess of federal coverage in those institutions.

The FDIC as a federal agency has its own statutory and administrative procedures required for each such transaction. Those procedures, among other things, may not require the same matters to be considered as required by Massachusetts law, or may not be on the same timing cycle as the application pending before the Division. That latter point is important since public notice, advertising and reporting is generally done for each such application before the Division. As a separate state agency operating under requirements of Massachusetts law and a publicly announced schedule, the Division

believes it should be able to act on such matters without waiting for decisions by other entities. As indicated, the FDIC will still have its authority to consider such applications under federal law and its own procedures, while the separate deposit insurance funds for savings banks and co-operative banks, acting solely as excess deposit insurers, have a role greatly reduced from when the existing provisions were enacted.

The major thrust of this recommendation is to eliminate the requirement that approval of other entities be obtained before the Commissioner can act on applications required to be filed with this Division. Nine sections of the legislation delete the provision at issue from merger and acquisition laws governing savings banks, cooperative banks and trust companies. One section, section 8, deletes similar language involving a merger by a state-chartered credit union insured by the Massachusetts Credit Union Share Insurance Corporation.

The remaining section of the recommendation, section 9, deletes a provision relative to the change in control of a state-chartered stock bank which eliminates the need for an application to be filed with the Division if the filing is done with a federal agency. That agency is generally the FDIC, since again, all state banks are insured by it. When the Division initially suggested that language in the statute several years ago, all banks were not so insured. In conjunction with the other change sought herein, the Division believes a separate application should be filed with the state agency which is the primary regulator for the bank involved in such a change of control transaction.

13. AN ACT RELATIVE TO AGGREGATE LOAN AND INVESTMENT LIMITATIONS GOVERNING CREDIT UNIONS.

Chapter 79 of the acts of 1990 was landmark legislation which recodified the laws governing state-chartered credit unions for the first time since 1926. The recodification was achieved, in part, because it did not make any substantive change to the laws then governing credit unions. The process that led to the recodification revealed an inconsistency in the then existing laws which was not addressed in order to remain true to the principle of no substantive change. The recodification, however, highlights this issue. Consistent with the

framework of credit union law the majority of lending and investment authorities granted are conditioned upon certain restrictions, including an aggregate limit on the amount of activity under each such authority. The Division's review of the loan and investment statutes revealed upwards of thirty such aggregate limitations. Reflecting the numerous amendments to the law over the sixty-four years prior to the recodification, neither the language of such limits nor the base upon which they are calculated, were consistent. Some limitations referred to deposits, some to assets and some to deposits, reserves and surplus accounts. At least five different bases were noted.

The main thrust of this recommendation is to amend each of the lending and investment sections so that a stated aggregate limit is consistent both in language and the base upon which it is calculated. For this purpose the Division has proposed in each provision that the limit be based on a percentage of the credit union's assets. Since this is an aggregate limit on a class of authority, rather than a limit of involvement with one person, the Division believes that total assets is an appropriate base. Depending on the existing law, the change in the base may result in some increased or decreased aggregate authority. In one situation involving recreational vehicle loans, the Division added an aggregate limit where none currently existed. Moreover, for home improvement loans the percentage limit was reduced to that for similar classes of loans, second mortgages and open end loans, in conjunction with the change to assets. Overall, the consistency achieved, will be important to the credit unions subject to the limitations and the Division in its enforcement of those provisions.