

By Mr. Walsh, a petition (accompanied by bill, Senate, No. 33) of Joseph B. Walsh and Robert K. Sheridan for legislation to limit the liability of certain directors of financial institutions. Banks and Banking.

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## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Eighty-Eight.

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### AN ACT LIMITING THE LIABILITY OF CERTAIN DIRECTORS OF FINANCIAL INSTITUTIONS.

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

- 1 Chapter 167F of the General Laws, as appearing in the 1986  
2 Official Edition, is hereby amended by adding the following  
3 section: —  
4 Section 10. Such bank may amend its charter or articles of  
5 organization, whether such charter or articles of organization was  
6 issued pursuant to chapter one hundred and sixty-eight, chapter  
7 one hundred and seventy, chapter one hundred and seventy-two,  
8 or pursuant to a special act of the general court, to add provisions  
9 or make any amendments that in the case of savings banks are  
10 not prohibited by the provisions of a section of chapter one  
11 hundred and sixty-eight, in the case of co-operative banks are not  
12 prohibited by the provisions of a section of chapter one hundred  
13 and seventy and in the case of trust companies are not prohibited  
14 by the provisions of a section of chapter one hundred and seventy-  
15 two, provided that, if such bank is a savings bank in mutual form,  
16 such addition or amendment shall have been approved by vote  
17 of a majority of the trustees and by vote of a majority of those  
18 corporators present at an annual or special meeting of corporators  
19 at which a quorum of corporators is present or, if such bank is  
20 a savings bank in stock form, such addition or amendment shall  
21 have been approved by vote or a majority of each class of stock  
22 outstanding and entitled to vote thereon, or, if such bank is a co-  
23 operative bank in mutual form, such addition or amendment shall

24 have been approved by vote of a majority of the directors and  
25 by vote of a majority of those shareholders present at an annual  
26 or special meeting of shareholders at which a quorum of  
27 shareholders is present or, if such bank is a co-operative bank in  
28 stock form or a trust company, such addition or amendment shall  
29 have been approved by vote or a majority of each class of stock  
30 outstanding and entitled to vote thereon, and provided further  
31 that such addition or amendment shall have been approved by  
32 the commissioner. The commissioner's approval shall be endorsed  
33 on such additions or amendments and the same shall thereupon  
34 be filed with the Secretary of the Commonwealth and shall take  
35 effect upon such filing. Such additions or amendments may  
36 include a provision eliminating or limiting the personal liability  
37 of a trustee to such bank, if such bank is a savings bank in mutual  
38 form or eliminating or limiting the personal liability of a director  
39 to such bank if such bank is a co-operative bank in mutual form  
40 or eliminating or limiting the personal liability of a director to  
41 such bank and its stockholders if such bank is a savings bank or  
42 a co-operative bank in stock form or is a trust company, for  
43 monetary damages for breach of fiduciary duty as a trustee or  
44 director notwithstanding any statutory provision or other law  
45 imposing such liability; provided, that such provision shall not  
46 eliminate or limit the liability of a trustee or director (i) for any  
47 breach of the trustee's or director's duty of loyalty to the  
48 corporation or the director's duty of loyalty to the bank or its  
49 stockholders, (ii) for acts or omissions not in good faith or which  
50 involve intentional misconduct or a knowing violation of law, or  
51 (iii) for any transaction from which the trustee or director derived  
52 an improper personal benefit.

53 No provision adopted pursuant to this section shall eliminate  
54 or limit the liability of a trustee or director for any act or omission  
55 occurring prior to the date upon which such provision becomes  
56 effective.