

By Mr. Saltmarsh of Winchester, petition of Sherman W. Saltmarsh, Jr., relative to the merger of co-operative banks and savings banks. Banks and Banking.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE MERGER OF CO-OPERATIVE AND SAVINGS BANKS.

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 inserting after section 72 the following new section
3 72A.

4 *Section 72A.* Any one or more savings banks, as defined in
5 section one of chapter 168 and any one or more co-operative
6 banks, as defined in section one of chapter 170 may merge or
7 consolidate into a single corporation, which may be a savings bank
8 or a co-operative bank, upon such terms as shall have been ap-
9 proved by the board of trustees or board of directors of each bank,
10 by the commissioner, and by the incorporators or shareholders of
11 each bank as provided herein.

1 SECTION 2. The boards of trustees or directors of each bank
2 shall agree upon the terms which shall be approved by a vote of at
3 least two thirds of the members of the board of each bank.

4 The boards may then petition the commissioner for approval of
5 the agreement. The petition must be accompanied by a copy of the
6 agreement, certified copies of the vote of each bank and an investi-
7 gation fee of one thousand dollars.

8 If the commissioner, after such notice and hearing as he may
9 prescribe, is satisfied that a merger or consolidation can be effected
10 on terms approved by him and he finds that such a merger or

11 consolidation is in the interest of the depositors and shareholders,
12 he may approve the plan and the merger or consolidation may be
13 effected subject to the direction of the commissioner.

14 Before becoming effective the merger or consolidation shall have
15 been approved, at meetings called for that purpose, by two-thirds
16 of the incorporators of the savings bank and by two-thirds of the
17 shareholders of the co-operative bank present, qualified to vote
18 and voting.

19 Notice for each meetings shall be given to the incorporators in
20 compliance with section 9 of chapter 168 and notice to the share-
21 holders shall be given in compliance with section 47 of chapter 170.

22 A certificate under the hands of the presidents and clerks, or
23 other duly authorized officers of the merging or consolidating
24 banks, setting forth that each bank, respectively, has complied with
25 the requirements of this section, shall be submitted to the commis-
26 sioner who, is he shall approve such consolidation, shall endorse
27 his approval upon such certificate, and thereupon such consolida-
28 tion shall become effective. The commissioner shall not endorse
29 until he has received notice from the deposit or share insurer of the
30 surviving corporation that arrangements satisfactory to the insurer
31 have been made for adjustment of their assessment. Upon consoli-
32 dation of any such banks, as herein provided:

33 (1) The corporation existence of all but one of the consolidating
34 corporations shall be discontinued and consolidated into that of
35 the remaining corporation, which shall continue. All and singular
36 the rights, privileges and franchises of each discontinuing corpora-
37 tion and its right, title and interest to all property of whatever kind,
38 whether real, personal or mixed, and things in action, and every
39 right, privilege, interest or asset of conceivable value or benefit
40 then existing which would inure to it under an unconsolidated
41 existence, shall be deemed fully and finally, and without any right
42 of revision, transferred to or vested in the continuing corporation,
43 without further act or deed, and such continuing corporation shall
44 have and hold the same in its own right as fully as if the same was
45 possessed and held by the discontinuing corporation from which it
46 was, by operation of the provisions hereof, transferred, and other
47 provisions of law relative to limitations on the number of directors,
48 incorporators or trustees and on the investment of funds of such
49 corporations shall not apply.

50 (2) A discontinuing corporation's rights, obligations and rela-
51 tions to any member, or depositor, creditor, trustee or beneficiary
52 of any trust, or other person, as of the effective date of the consoli-
53 dation, shall remain unimpaired, and the continuing corporation
54 shall, by the consolidation, succeed to all such relations, obliga-
55 tions and liabilities, as though it has itself assumed the relation or
56 incurred the obligation or liability; and its liabilities and obliga-
57 tions to creditors existing for any cause whatsoever shall not be
58 impaired by the consolidation; nor shall any obligation or liability
59 of any member in any such corporation, continuing or discontinu-
60 ing, which is party to the consolidation, be affected by any such
61 consolidation, but such obligations and liabilities shall continue as
62 fully and to the same extent as the same existed before the consoli-
63 dation, and the provisions relative to the limitations on shares and
64 accounts, shall not apply.

65 (3) A pending action or other judicial proceeding to which any
66 of the consolidating corporations is a party shall not be deemed to
67 have abated or to have discontinued by reason of the consolida-
68 tion, but may be prosecuted to final judgment order or decree in
69 the same manner as if the consolidation had not been made; or the
70 continuing corporations may be substituted as a party to any such
71 action or proceeding to which the discontinuing corporation was a
72 party, and any judgment, order or decree may be rendered for or
73 against the continuing corporation that might have been rendered
74 for or against such discontinuing corporation if consolidation had
75 not occurred.

76 (4) After such consolidation, a foreclosure of a mortgage begun
77 by any of the discontinuing corporations may be completed by the
78 continuing corporation, and publication begun by the discontinuing
79 corporation may be continued in the name of the discontinuing
80 corporation. Any certificate of possession, affidavit of sale or
81 foreclosure deed relative to such foreclosure shall be executed by
82 the proper officers in behalf of whichever of such corporations
83 actually took possession or made the sale, but any such instrument
84 executed in behalf of the continuing corporation shall recite that it is
85 the successor of the discontinuing corporation which commenced
86 the foreclosure.

87 A new name, or the name of any of the consolidating corpora-
88 tions may be adopted as the name of the continuing corporation at
89 the special meetings called as herein provided, and it shall become
90 the name of the continuing corporation upon the approval of the
91 consolidation, without further action under the laws of the com-
92 monwealth as to change or adoption of a new name on the part of
93 the continuing corporation.

94 Any merger or consolidation may be approved and effected
95 pursuant to this section, notwithstanding that the percentage
96 which the aggregate value of the guaranty fund, surplus and other
97 reserves, of any of the consolidating corporations, bears to its
98 liabilities including share liabilities, exceeds such percentage of any
99 of the other consolidating corporations, and any consolidating
100 corporation having such an excess of percentage shall not be
101 required to pay an extra dividend or make any other distribution to
102 its shareholders or depositors.

1 SECTION 3. A. If the surviving corporation is the co-operative
2 bank then upon final approval of the commissioner the discon-
3 tinued savings bank shall cease to be a member of the Mutual
4 Savings Central Fund, Inc., and the surviving corporation shall be
5 entitled to receive from the Mutual Savings Central Fund, Inc. an
6 amount not to exceed the actual deposits made by the discontinued
7 savings bank, pursuant to the provisions of section four of chapter
8 forty-four of the acts of nineteen hundred and thirty-two, as
9 amended, less the indebtedness, if any, to the said Mutual Savings
10 Central Fund, Inc. All amounts required to be paid by the discon-
11 tinued corporation pursuant to the provisions of section one of
12 chapter forty-three of the acts of nineteen hundred and thirty-four,
13 as amended, shall be retained by the Mutual Savings Central Fund,
14 Inc., as a charge for insurance of the deposits of such corporation
15 while it was a member bank. The surviving corporation shall,
16 however, participate in any distribution made under the provisions
17 of section ten of said chapter forty-three, but such distribution
18 shall be limited to an amount equal to the amount the corporation
19 would have received had the deposit insurance fund been liquidat-
20 ed at the time the savings bank was discontinued.

21 *B.* If the surviving corporation is a savings bank then upon final
22 approval of the commissioner the discontinued co-operative bank
23 shall cease to be a member of the Co-operative Central Bank and
24 the surviving corporation shall be entitled to receive from the
25 Co-operative Central Bank an amount not to exceed the actual
26 deposit made by the discontinued co-operative bank pursuant to
27 the provisions of section six of chapter forty-five of the acts of
28 nineteen hundred and thirty-two, as amended, less the indebted-
29 ness, if any, to the said Co-operative Central Bank. All amounts
30 required to be paid by the discontinued corporation pursuant to
31 the provisions of section one of chapter seventy-three of the acts of
32 nineteen hundred and thirty-four, as amended, shall be the Central
33 Co-operative Bank, as a charge for insurance of the deposits of
34 such corporation which it was a member bank. The surviving
35 corporation shall, however, participate in any distribution made
36 under the provisions of section nine of said chapter seventy-three,
37 but such distribution shall be limited to an amount equal to the
38 amount the corporation would have received had the Share Insur-
39 ance Fund been liquidated at the time the co-operative bank was
40 discontinued.

