

**CHAPTER 482 OF THE ACTS OF 2014
AN ACT MODERNIZING THE BANKING LAWS**

January 7, 2015

KEY MATTERS OF INTEREST

TRUTH IN LENDING (CHAPTER 140D)

- A provision is added stating that creditors must comply with future changes to federal TIL until the Division takes further action, if any, thereby eliminating future compliance confusion;
- The Commissioner is authorized to waive any provision of Chapter 140D that conflicts with a similar consumer protection in the Federal TIL Act under a procedure set out in the law;
- Authority is added for the Commissioner to take any action to retain the Commonwealth's current exemption which will negate the need for further Legislative action and amendments to Chapter 140D;
- Deletes the difference from Reg. Z of one day in the minimum time period for mailing a billing cycle statement; and
- Deletes the difference from Reg. Z in the trigger amount for refunding a credit balance from \$1.00 and under to more than \$1.00.

NOTE: The Division updated the Truth in Lending regulations in January on a variety of issues.

ELECTRONIC FUND TRANSFERS (CHAPTER 167B)

The law subjects banks to the Federal EFT Act and makes the following additional changes to the Massachusetts law, Chapter 167B:

- The mandatory annual assessment to be charged equally on all ATMs is rewritten so that depository institution ATMs are assessed at a rate not to exceed 50% of the amount assessed non-bank ATMs; and
- Credit unions are treated the same as banks in all EFT matters in the law.

MUTUAL HOLDING COMPANIES (CHAPTER 167H)

- The corporate governance law is rewritten so that a MHC can elect such governance provisions from business corporation law, Chapter 156D, subject to safe banking requirements; and
- Merger and acquisition powers are added or clarified for transactions with any mutual bank or credit union; federal MHCs and MHCs in another state; bank holding companies with the MHC as the continuing entity; and limited purpose trust companies.

DIVISION OF BANKS (CHAPTER 167)

- A statute is added to list those federal laws and regulations with which a state-chartered bank must comply without the necessity to also comply with a comparable state law, subject to the exceptions noted. In several cases the state law would remain and govern credit unions or

other entities engaged in the various transactions. In those statutes banks are deleted from the definitions which trigger the law. The authority to examine and enforce the federal provisions would continue to remain under the jurisdiction of the Division of Banks:

1. Funds Availability
2. Fair Credit Billing
3. EFTS (\$50.00 maximum liability retained)
4. Deposit of securities for safekeeping
5. Security and protection of banks
6. Insider loans

(The state law on Truth in Savings is repealed in a separate SECTION)

- The Commissioner is granted authority to establish a tiered regulatory structure for the examination and supervision of state-chartered banks to reduce costs and the regulatory burden on the industry. The law clarifies that the 12 to 18 month statutory examination cycle can be varied in conjunction with a tiered regulatory structure;
- With 30-days' notice to the Division that the Commissioner can waive or extend, a bank may engage and invest in products and services, possibly through new and emerging technologies, which are incidental to or related to banking and not prohibited by law and do not pose a substantial risk to the bank; and
- The authority to obtain confidential treatment of certain information in an application consistent with federal guidelines is added to the statute.

POWERS AND INVESTMENTS (CHAPTER 167F)

- Parity power authority with federal banks and out-of-state banks is streamlined to allow state chartered banks to exercise federal bank or out-of-state bank powers with 30 days advance notice to the Commissioner. The authority for regulations by the Division with subsequent Legislative review is repealed;
- The same process of advance notice is substituted for the currently required approval of the Commissioner for banks to engage in activities which are financial in nature;
- Adds authority to request and the Commissioner to waive any remaining time in an advance notice authority;
- Adds authority for a state-chartered bank individually or in concert with other financial institutions to establish, operate or subscribe for services to obtain technology, compliance, trust services, financial planning, human resource or other operation functions, management or staff;
- Subsidiaries can be established, except for an OREO subsidiary, with up to 50% of a bank's Tier I capital with a ten day notice to the Commissioner. Investments in excess of 50% would require approval of the Commissioner; and
- Authority is added in statute for a subsidiary or affiliate to merge with and into the bank.

CORPORATE BANK TRANSACTIONS (CHAPTER 167I)

Several corporate transactions are streamlined or made consistent among various charters. Amendments are made to Chapter 167A on bank holding companies and Chapter 167H on mutual holding companies as well as the addition of a new Chapter 167I to govern other transactions. Among the transactions addressed in the law include the following:

- A statute is added to streamline a multi-step transaction where the substantive transaction is a merger to be approved by the Commissioner. As a result, the transaction would not have to go before the Board of Bank Incorporation since the Commonwealth's action would come from the Commissioner;
- State-chartered banks are authorized to convert to any federal bank without approval of or process with the Division; Federal banks are authorized to convert to any state bank charter with the Commissioner's approval;
- Federal credit unions are authorized to convert to a state mutual bank;
- State credit unions and federal credit unions are authorized to merge with and into the stock bank subsidiary of a Mutual Holding Company;
- A process is included to allow a mutual bank to become a subsidiary bank of a Mutual Holding Company without forming a MHC itself;
- A framework is created for the unwinding of a mutual holding company;
- A mutual bank's conversion to stock form would remain tied to approval and regulations of the Commissioner but both the Legislative approval of the regulations and the Commissioner being tied, by statute, to following federal regulations is eliminated;
- The Commissioner is authorized to do an expedited merger of a mutual savings bank as he can do now for a mutual co-operative bank;
- References to the old corporate law, Chapter 156B, are switched to the updated corporate law, Chapter 156D;
- Allows the Commissioner alone to charter an interim bank to facilitate a multi-step corporate transaction;
- Retains all current authorities of the Depositors Insurance Fund and the Co-operative Central Bank;
- Adds the merger and acquisition of limited purpose trust companies to transaction authorities; and
- Deletes statutes on simultaneous market conversion/merger since transaction never has been done.

CORPORATE GOVERNANCE (CHAPTER 167J)

- The law allows a bank to elect to follow the governance provisions of business corporation law, Chapter 156D, or the law of the state in which its holding company is located, if applicable, subject to safe banking requirements;
- Numerous sections specifying various reserve and surplus accounts are deleted and substituted with the general requirement for a bank, at a minimum, to be "adequately capitalized" as determined by the federal deposit insurer (FDIC) or the Commissioner;
- The statutes itemizing the information, with dollar amount triggers, to be included in management's report to a bank's governing body is substituted with authority for each bank to specify what information is to be reported to the Board or as designated;
- Notice to the Commissioner of the selection of an auditor by the Audit Committee in a mutual bank is eliminated while all remaining provisions of existing law are retained, including the filing of the completed audit with the Commissioner; and
- Clarifies what statutory provisions are applicable to the subsidiary bank of a Mutual Holding Company.

DEPOSITS AND ACCOUNTS (CHAPTER 167D)

The number of sections in this Chapter is streamlined and reduced by about half through deletions and the combination of certain sections. The deletions include:

- Funds Availability, section 35, as noted previously;
- Advertisements in a language other than English, section 28; and
- Customer information on deposit accounts advertised to be available by telephone.

Provisions retained, include:

- The “18-65 law” as a separate section;
- The “dishonored check”/ deposit return item provision as a separate section; and
- The return of cancelled checks.

CHARTERING CHAPTERS (CHAPTERS 168, 170, and 172)

- The Trustees of a mutual savings bank are authorized to elect the president instead of the Corporators;
- Reduces the amount of Corporators that must be residents of the Commonwealth from three-fourths to a majority;
- The Commissioner’s required approval of a change in the name of a co-operative bank is eliminated;
- A Bank’s Board could take action:
 - By written or electronic unanimous consent without meeting.
 - To add two Trustees in a mutual savings bank or two Directors in a mutual co-operative bank after the annual meeting.
- Eliminates the requirement that the by-laws and any changes thereto of a co-operative bank and of all stock banks are filed with the Division of Banks as well as the provision requiring a stock bank to submit the amendments with a statement under the penalties of perjury that the copy is true and correct;
- The process to charter a mutual or stock bank is made consistent and clear authority is added to amend a bank’s Articles of Organization; and
- The Savings Bank and the Co-operative Bank Retirement Systems statutes are retained with all existing provisions.

BANKING OFFICES (CHAPTER 167C)

Establishes in law that a main office does not have to take deposits. An office can be so designated if it pays withdrawals; makes loans; or takes deposits.

Several additional changes to Chapter 167C on banking offices are made in the law. For state-chartered banks, the authorities related to establishing and operating ATMs are restated in this Chapter since, as we noted above, banks are no longer governed by Chapter 167B.

Additionally, out-of-state bank and foreign bank branching authority is moved from Chapter 167 to the Chapter on banking offices. Similarly, authority to come into the Commonwealth to act as a foreign fiduciary is also moved from Chapter 167 to Chapter 167C.

A separate summary below details those laws in Chapter 167C in which the Commissioner has been substituted for the Board of Bank Incorporation.

MORTGAGES AND LOANS (CHAPTER 167E)

The statutorily mandated time periods for inspections of real estate after default of payment of principal, interest or taxes are eliminated and will now be subject to inspections according to Bank Policy, consistent with the framework of Chapter 167E.

TRUST DEPARTMENTS (CHAPTER 167G)

Several amendments make relatively minor revisions and updates to Chapter 167G, which governs trust departments in Massachusetts banks as well as foreign fiduciaries. Several of the changes are necessitated by the adoption of the Uniform Probate Code.

BOARD OF BANK INCORPORATION

The Commissioner's approval authority would be substituted for the BBI for 4 types of transactions:

- National bank to convert to a trust company;
- State-chartered bank to relocate its main office to another municipality;
- Foreign country bank to establish a branch office in Massachusetts; and
- Foreign country bank to come into Commonwealth to act as Foreign Fiduciary.

As we noted previously, the Board's authority is granted to the Commissioner alone for certain multi-step corporate transactions and the chartering of an interim bank.

A complete SECTION BY SECTION summary of the law is available.