

HOUSE No. 1054

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to mortgage review boards and a small business loan review board within the Division of Banks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>2/18/2021</i>

HOUSE No. 1054

By Mr. Cahill of Lynn, a petition (accompanied by bill, House, No. 1054) of Daniel Cahill relative to mortgage review boards and a small business loan review board within the Division of Banks. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to mortgage review boards and a small business loan review board within the Division of 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 140 of the General Laws, as appearing in the 2018 Official
2 Edition, is hereby amended by striking out section 96 and inserting in place thereof the following
3 section:-

4 Section 96. For purposes of sections 96-114A of this chapter, inclusive, "small loan"
5 means a loan of a principal amount of less than \$50,000.00 consistent with Title X of the federal
6 Dodd-Frank Wall Street Reform and Consumer Protection Act, the proceeds of which are
7 intended by the borrower for use primarily for personal, family, or household purposes. The
8 principal loan amount set forth in the preceding sentence shall automatically adjust to correspond
9 with any inflation adjustment made to the exempt transaction amount referenced in the Federal
10 Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act.
11 Small loans subject to this chapter shall include loans made to any person within this

commonwealth, in person or by any other means, by an entity engaged in the business of making consumer loans outside this commonwealth.

No person shall directly or indirectly engage in the business of making small loans, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the sum loaned, without first obtaining from the commissioner of banks, in sections ninety-six to one hundred and fourteen, inclusive, called the commissioner, a license to carry on the said business in the town where the business is to be transacted.

When an application for a loan or for an endorsement or guarantee or for the purchase of a note is made by any person within this commonwealth, and the money is advanced or the endorsement or guarantee is made or furnished by any person without this commonwealth, the transaction shall be deemed a loan made within this commonwealth, and such a loan and the parties making it shall be subject to sections ninety-six to one hundred and thirteen, inclusive. The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections, but the foregoing provisions of this sentence shall not apply in the case of any transaction which involves any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price; provided, however, that any advance of money by such seller or, by a person acting on his behalf for the purpose of paying an existing indebtedness of such buyer or for any other purpose shall constitute a loan of money subject to the provisions of this section. For the purposes of said sections, the amount to be paid upon any small loan or less for interest or expenses shall include all sums paid or to be paid by or on behalf of the borrower for interest, brokerage, recording fees, commissions, services,

35 extension of loan, forbearance to enforce payment, and all other sums charged against or paid or
36 to be paid by the borrower for making or securing directly or indirectly the loan, and shall
37 include all such sums when paid by or on behalf of or charged against the borrower for or on
38 account of making or securing the loan, directly or indirectly, to or by any person, other than the
39 lender, if such payment or charge was known to the lender at the time of making the loan, or
40 might have been ascertained by reasonable inquiry. Any person directly or indirectly engaging,
41 for a fee, commission, bonus or other consideration, in the business of negotiating, arranging,
42 aiding or assisting the borrower or lender in procuring or making small loans, for which the
43 amount paid or to be paid for interest and expenses, including all amounts paid or to be paid to
44 any other party therefor, exceeds in the aggregate an amount equivalent to twelve per cent per
45 annum, whether such loans are actually made by such person or by another party, shall be
46 deemed to be engaged in the business of making small loans, and shall be subject to sections
47 ninety-six to one hundred and twelve, inclusive. If, after all deductions or payments, whether on
48 account of interest, expenses or principal made substantially contemporaneously with the making
49 of the loan, the amount retained by the borrower be equal to or less than the amount of a small
50 loan, as so defined, the transaction shall be deemed to be a loan in the amount of the sum so
51 retained by the borrower after such deductions or payments, notwithstanding that the loan be
52 nominally for a greater sum.

53 This section shall not apply to loans that are subject to section 90A or section 28B of
54 chapter 183.

55 The provisions of this section and sections ninety-six A to one hundred and fourteen A,
56 inclusive, shall apply only to loans made primarily for personal, family or household purpose;
57 provided, however, that the provisions of this section and said sections ninety-six A to one

hundred and fourteen, inclusive, shall not apply to loans to any student, or to any parent, legal guardian or sponsor of a student, made by any nonprofit, public or independent post-secondary educational institution within the commonwealth authorized by law to grant degrees, by the commonwealth or by any agency or instrumentality thereof; and provided, further, that such institutions may not take, receive, reserve, or charge interest, expenses and other consideration for making or securing a small loan in excess of those permitted by section one hundred, except in the event of prepayment or refinancing, in whole or in part, of any existing loans by such institution to any such student, or to any such parent, legal guardian or sponsor of a student, which refinancing or prepayment occurs within eighteen months of the date such loan was made.

SECTION 2. Chapter 140 of the General Laws, as so appearing, is hereby amended by striking out section 102 and inserting in place thereof the following section:-

Section 102. Each application for a license shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven for the filing thereof. The amount of the fees for all licenses granted under section ninety-six and the relocation investigation fee referred to hereunder shall be determined pursuant to the aforementioned chapter seven provision, and if an applicant desires to carry on business at more than one place he shall procure a license for each place where the business is to be conducted.

Any change of location of an office of a licensee shall require the prior approval of the commissioner. Such request for relocation shall be in writing setting forth the reason or reasons for the request, and shall be accompanied by a relocation investigation fee.

79 The commissioner may participate in a multi-state licensing system for the sharing of
80 regulatory information and for the licensing and application, by electronic or other means, of
81 entities engaged, directly or indirectly, in the business of making small loans. The commissioner
82 may establish requirements for participation by an applicant in a multi-state licensing system
83 which may vary from the provisions of this section and sections 97 and 101. The commissioner
84 may require a background investigation of each applicant for a small loan license by means of
85 fingerprint and state and national criminal history record checks by the department of criminal
86 justice information services pursuant to section 172 of chapter 6 and the Federal Bureau of
87 Investigation. If the applicant is a partnership, association, corporation or other form of business
88 organization, the commissioner may require a background investigation for each member,
89 director and principal officer of the applicant and any individual acting as a manager of an office
90 location. The applicant shall pay directly to the multi-state licensing system any additional fees
91 relating to participation in the multi-state licensing system.

92 SECTION 3. Chapter 140 of the General Laws, as so appearing, is hereby amended by
93 striking out section 110 and inserting in place thereof the following section:-

94 Section 110. Whoever, not being duly licensed as provided in section ninety-six on his
95 own account or on account of any other person not so licensed, engages in or carries on, directly
96 or indirectly, either separately or in connection with or as a part of any other business, the
97 business of making loans or buying notes or furnishing endorsements or guarantees, to which
98 sections ninety-six to one hundred and eleven, inclusive, apply, shall be punished by
99 imprisonment in the state prison for not more than ten years or in a jail or house of correction for
100 not more than two and one half years, or by a fine of not more than ten thousand dollars, or by
101 both such fine and imprisonment. Any loan made or note purchased or endorsement or guarantee

furnished by an unlicensed person in violation of said sections shall be void. In any judicial proceedings under said sections the fact that the defendant has made or assisted in the making of two or more small loans, upon which there has directly or indirectly been paid or charged, for interest, brokerage, recording fees, commissions, services, extension of loan, forbearance to enforce payment or other expenses, a sum which exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the amount actually received by the borrower, whether such sum has been paid to or charged by the defendant or paid to or charged by any other person, shall be prima facie evidence that the defendant has engaged in and carried on the business of making loans to which sections ninety-six to one hundred and twelve, inclusive, apply.

SECTION 4. Chapter 140 of the General Laws, as so appearing, is hereby amended by striking out section 114A and inserting in place thereof the following section:-

Section 114A. Trust companies, savings banks, co-operative banks, savings and loan associations, credit unions, national banking associations, federal savings banks and federal savings and loan associations or federal credit unions or any subsidiary of the foregoing shall not be subject to the provisions of sections ninety-six to one hundred and fourteen, inclusive; provided, that such institutions may not take, receive, reserve or charge interest, expenses and other considerations for making or securing a small loan in excess of those permitted by section one hundred. Any small loan made by any trust company, savings bank, co-operative bank, savings and loan association, credit union, national banking association or federal savings and loan association on which charges for interest, expenses and other considerations exceed those permitted by section one hundred may be declared void by the supreme judicial or superior court in equity upon petition by the person to whom the loan was made, and any such trust company, bank, association or credit union making such loan shall be subject to a fine of not more than five

hundred dollars. This section shall not be construed as preventing a rate of charge for interest, expenses and other consideration on one or more portions of a loan in excess of the permitted maximum rate of charge applicable to said portion or portions, provided, that the composite rate of charge on the whole loan produces an amount equal to or less than that which would be produced were said maximum rate of charge applied to said loan. Extension, default or deferment charges shall not be deemed to be interest, expenses and other considerations in determining the maximum rate of charge that may be taken, received, reserved or charged for said loan.

SECTION 5. Chapter 167 of the General Laws, as so appearing, is hereby amended by striking out section 14A and inserting in place thereof the following section:-

Section 14A. There shall be established within the Division of Banks 2 regional mortgage review boards in the commonwealth. There shall be a Boston metropolitan area mortgage review board which shall include the counties of Suffolk, Essex, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, and Nantucket; and a central and western Massachusetts mortgage review board which shall include the counties of Worcester, Franklin, Hampden, Hampshire and Berkshire. Each such board shall consist of 5 members appointed by the commissioner for a term of 3 years, 2 of whom shall be mortgagees and 3 of whom shall be community representatives; provided, however, that all members of each such board shall live or work within the respective region. The commissioner shall provide minority and demographic representation in the membership of each board.

Upon the expiration of the term of any member of a regional board, a successor shall be appointed, in like manner, for a term of 3 years. In the event of a vacancy, the commissioner

147 may, in like manner, appoint a member who shall serve for the remainder of the unexpired term.
148 Members of each such board shall serve without compensation, and shall be sworn to the faithful
149 performance of their duties. Each regional board shall suggest for consideration by the
150 commissioner 1 or more names for each such expiring term or vacancy.

151 The mortgage review boards shall meet on a regular basis to review each residential
152 mortgage loan denial that an applicant believes was denied on the basis of the location of the
153 property. Any applicant whose residential mortgage loan application is denied by any mortgagee
154 making 5 or more residential mortgage loans in any calendar year shall be instructed by the
155 mortgagee, in writing, at the time of denial of his or her right to appeal any such denial to the
156 appropriate mortgage review board.

157 For the purposes of this section, a “residential mortgage loan denial” shall mean the
158 denial of a loan on real property located within the respective regions of the Boston metropolitan
159 area mortgage review board or the central and western Massachusetts mortgage review board
160 having thereon a dwelling house with accommodations for 4 or less separate households and
161 occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt; provided,
162 however, that residential property shall be limited to the primary residence of a person; provided
163 further, that residential property shall not include an investment property or residence other than
164 a primary residence; and provided further, that residential property shall not include residential
165 property taken in whole or in part as collateral for a commercial loan.

166 Said board shall review each such submitted mortgage application, make its
167 determination and advise the applicant thereof, in writing, within 45 days of such appeal of a
168 mortgage loan application denial and if such board fails to complete said action within said 45

169 days, the applicant will be considered to have exhausted his or her administrative remedies. The
170 decision of the board shall be subject to review in the manner provided in chapter 30A, or in
171 accordance with the provisions of section 64 of chapter 183.

172 The commissioner may promulgate rules and regulations governing the establishment,
173 operation and procedures of said mortgage review boards.

174 SECTION 6. Chapter 167 of the General Laws, as so appearing, is hereby amended by
175 striking out section 14C and inserting in place thereof the following section:-

176 Section 14C. There shall be established within the Division of Banks a small business
177 loan review board in the commonwealth. The board shall consist of 5 members appointed by the
178 commissioner for a term of 3 years, 2 of whom shall be representatives of banks or bank holding
179 companies and 3 of whom shall be small business or community representatives. In making such
180 appointments, the commissioner may take into consideration geographic diversity within the
181 commonwealth.

182 Upon the expiration of the term of any member of the board, a successor shall be
183 appointed, in like manner, for a term of 3 years. In the event of a vacancy, the commissioner
184 may, in like manner, appoint a member who shall serve for the remainder of the unexpired term.
185 Members of the board shall be sworn to the faithful performance of their duties. The board shall
186 suggest for consideration by the commissioner 1 or more names for each such expiring term or
187 vacancy.

188 The small business loan review board shall meet on a regular basis or, as demand for its
189 services requires, to review small business loan denials that applicants believe were
190 unreasonably denied. The small business loan review board shall be required to report the results

of its findings to the applicant within 30 days of submission of request for review; provided, however, that the board may, at its discretion, extend the review period to within 60 days of a submission or request. Upon making a determination for reason of denial, the small business loan review board shall be required to provide information on its findings to the applicant and commissioner and shall provide information to the applicant on alternative sources of financing, including information on any small business financing programs or other relevant programs offered by the commonwealth. The commissioner shall file a report regarding the activities of the small business loan review board for each calendar year with the chairs of the joint committee on community development and small business, chairs of the joint committee on economic development and emerging technologies, and chairs of the joint committee on financial services. Such report shall be filed within 60 days of the end of each calendar year.

In addition, the small business loan review board may conduct annual studies or issue an annual report on the availability of credit to small businesses within all regions of the commonwealth and report back to the commissioner on its findings. The report may be made available to the public through the website of the office of consumer affairs and business regulation or the small business website established under section 3 of chapter 23A. The commissioner shall also promote the small business review board as a resource for small businesses on the small business website established under section 3 of chapter 23A.

For the purposes of this section, a “small business loan” shall mean a loan by a bank, federal bank or federally chartered credit union to a business organization or entity which either had gross annual revenues of \$1 million or less in its preceding calendar year or which meets the size standards and revenue requirements of the Small Business Administration for each industry sector pursuant to 13 CFR 121.201.

214 The commissioner may promulgate rules and regulations governing the establishment,
215 operation and procedures of said small business loan review board.