

HOUSE No. 2190

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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 establishing uniform confidentiality and enforcement provisions relative to certain licensees under the jurisdiction of the Division of Banks.

PETITION OF:

NAME:

Aaron Michlewitz

DISTRICT/ADDRESS:

3rd Suffolk

HOUSE No. 2190

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 2190) of Aaron Michlewitz for legislation to establish uniform confidentiality and enforcement provisions relative to certain licensees under the jurisdiction of the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 542 OF 2015-2016.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninetieth General Court
(2017-2018)**
—————

An Act establishing uniform confidentiality and enforcement provisions relative to certain licensees under the jurisdiction of 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. Section 24D of chapter 93 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by inserting after the word “licensee” in lines 12, 15 and 29,
3 the following words:— or registrant.

4 SECTION 2. Section 24D of chapter 93 of the General Laws, as so appearing, is hereby
5 further amended by inserting after the word “licensees” in line 34, the following words:— or
6 registrants.

7 SECTION 3. Chapter 93 of the General Laws, as so appearing, is hereby amended by
8 striking out section 24F and inserting in place thereof the following section:

9 Section 24F. The commissioner, or the commissioner’s examiners or other assistants as
10 the commissioner may designate, may summon a licensee or registrant, or any of its agents or
11 employees, and other witnesses as necessary, and examine them relative to their transactions,
12 may require the production of books and papers and, for those purposes may administer oaths.
13 Whoever, without justifiable cause, fails or refuses to appear and testify or to produce books and
14 papers when so required, or obstructs the commissioner or the commissioner’s representatives
15 making the examination in the performance of their duties, shall be punished by a fine of not
16 more than \$1,000 or by imprisonment for not more than 6 months, or both. Each day a violation
17 occurs or continues shall be considered a separate offense. The penalty provision of this section
18 shall be in addition to, and not in lieu of, any other provision of law applicable to a licensee or
19 other person for violating section 24A or any rule or regulation made thereunder.

20 SECTION 4. Chapter 93 of the General Laws, as so appearing, is hereby amended by
21 adding after section 24K the following two sections:—

22 Section 24L. (a) Whenever the commissioner finds that any licensee or exempt person
23 under section 24A of this chapter has violated any provision of this chapter or any rule or
24 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
25 of the business of a debt collector or a third party loan servicer, the commissioner may, by order,
26 in addition to any other action authorized under this chapter or any rule or regulation made
27 thereunder, impose a penalty upon the person which shall not exceed \$5,000 for each violation,
28 up to a maximum of \$100,000 for the violation plus the costs of investigation. The commissioner
29 may impose a penalty which shall not exceed \$5,000 for each violation of this chapter, or any
30 rule or regulation adopted thereunder, by a person other than a licensee or exempt person under
31 section 24A of this chapter, plus the costs of investigation.

32 (b) Nothing in this section shall limit the right of any individual or entity who has been
33 injured as a result of any violation of this chapter by a licensee, or any person other than a
34 licensee or exempt person under section 24A of this chapter, to bring an action to recover
35 damages or restitution in a court of competent jurisdiction.

36 (c) Any findings or order issued by the commissioner pursuant to this section shall be
37 subject to review as provided in chapter thirty A.

38 Section 24M. (a) Whenever the commissioner determines that any person has, directly or
39 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
40 applicable to the conduct of the business of a debt collector or a third party loan servicer; or any
41 order issued by the commissioner under this chapter or any written agreement entered between
42 the licensee and the commissioner; the commissioner may serve upon the person a written notice
43 of intention:

44 (1) to prohibit the person from performing in the capacity of a principal employee on
45 behalf of any licensee for a period of time that the commissioner deems necessary;

46 (2) to prohibit the person from applying for or obtaining a license from the commissioner
47 for a period up to 36 months following the effective date of an order issued under subsection (b)
48 or (c); or

49 (3) to prohibit the person from any further participation, in any manner, in the conduct of
50 the affairs of a debt collector or a third party loan servicer in Massachusetts or to prohibit the
51 person from being employed by, an agent of, or operating on behalf of a licensee under this
52 chapter or any other business which requires a license from the commissioner.

53 (b) A written notice issued under subsection (a) shall contain a written statement of the
54 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
55 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
56 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
57 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
58 by a duly authorized representative, the party shall be deemed to have consented to the issuance
59 of an order of prohibition in accordance with the notice.

60 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
61 finds that any of the grounds specified in the notice have been established, the commissioner
62 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
63 appropriate.

64 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
65 person. The commissioner shall also serve a copy of the order upon the licensee of which the
66 person is an employee or on whose behalf the person is performing. The order shall remain in
67 effect and enforceable until it is modified, terminated, suspended, or set aside by the
68 commissioner or a court of competent jurisdiction.

69 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
70 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
71 part in the conduct of the affairs of a debt collector or a third party loan servicer in Massachusetts
72 may not, while the order is in effect, continue or commence to perform in the capacity of a
73 principal employee, or otherwise participate in any manner, if so prohibited by order of the
74 commissioner, in the conduct of the affairs of:

- 75 (1) any licensee or registrant under this chapter;
- 76 (2) any other business which requires a license from the commissioner; and
- 77 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
78 subsidiary thereof.

79 SECTION 5. Section 99 of chapter 140 of the General Laws, as so appearing, is hereby
80 amended by striking out section 99 and inserting in place thereof the following section:—

81 Section 99. A licensee shall, when directed by the commissioner, permit the
82 commissioner or the commissioner's duly authorized representative to inspect its records and
83 evidence of compliance with this chapter or any rule and regulation issued thereunder and with
84 any other law, rule and regulation applicable to the conduct of its business. The commissioner
85 shall preserve a full record of each examination of a licensee including a statement of its
86 condition. All records of investigations and reports of examinations by the commissioner,
87 including workpapers, information derived from the reports or responses to the reports, and any
88 copies thereof in the possession of any licensee under the supervision of the commissioner, shall
89 be confidential and privileged communications, shall not be subject to subpoena and shall not be
90 a public record under clause twenty-sixth of section 7 of chapter 4. For the purpose of this
91 paragraph, records of investigation and reports of examinations shall include records of
92 investigation and reports of examinations conducted by a financial regulatory agency of the
93 federal government and any other state, and of any foreign government which are considered
94 confidential by the agency or foreign government and which are in possession of the
95 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
96 record protecting the confidentiality of any such record, and other than any such record on file

97 with the court or filed in connection with the court proceeding, and the court may exclude the
98 public from any portion of a proceeding at which any such record may be disclosed. Copies of
99 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
100 to any other person, organization or agency without prior written approval by the commissioner.
101 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
102 government, of other states, or of foreign countries, and any law enforcement agency, the
103 information, reports, inspections and statements relating to the licensees under the
104 commissioner's supervision.

105 The commissioner may summon licensees, companies or associations, or any of their
106 agents or employees, and other witnesses as necessary, and examine them relative to their
107 transactions and to the condition of their business, and for that purpose may administer oaths.
108 Whoever without justifiable cause refuses to appear and testify when so required, or obstructs the
109 commissioner or the commissioner's representatives in the performance of their duties, shall be
110 punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or
111 both. The penalty provision of this section shall be in addition to, and not in lieu of, any other
112 provision of law applicable to a licensee or other person for violating section 96 or any rule or
113 regulation made thereunder.

114 SECTION 6. Section 103 Chapter 140 of the General Laws, as so appearing, is hereby
115 amended by striking out section 103, and inserting in place thereof the following three
116 sections:—

117 Section 103. The commissioner may suspend or revoke any license issued pursuant to
118 section ninety-six if the commissioner finds that:

119 (i) the licensee has violated any provision of sections ninety-six to one hundred and
120 fourteen, inclusive, or any rule or regulation made by the commissioner under any provision of
121 sections ninety-six to one hundred and fourteen, inclusive, or any other law applicable to the
122 conduct of the business; or

123 (ii) any fact or condition exists which, if it had existed at the time of the original
124 application for the license, would have warranted the commissioner in refusing to issue the
125 license.

126 Except as provided in section one hundred and three A, no license shall be revoked or
127 suspended except after notice and a hearing thereon pursuant to chapter thirty A.

128 A licensee may surrender a license by delivering to the commissioner written notice that
129 it thereby surrenders the license, but the surrender shall not affect the civil or criminal liability of
130 the licensee for acts committed before the surrender.

131 No revocation, suspension or surrender of any license shall impair or affect the obligation
132 of any pre-existing lawful contract between the licensee and any person.

133 The penalty provision of this section shall be in addition to, and not in lieu of, any other
134 provision of law applicable to a licensee or other person for violating section ninety-six, ninety-
135 seven, ninety-eight, one hundred, one hundred and one, one hundred and two, one hundred and
136 four, one hundred and six, and one hundred and nine or any rule or regulation made thereunder.

137 Section 103A. (a) If the commissioner determines, after giving notice of an opportunity
138 for a hearing, that a licensee has engaged or is about to engage in an act or practice constituting a
139 violation of a provision of sections ninety-seven, ninety-eight, one hundred, one hundred and

140 one, one hundred and two, one hundred and four or one hundred and nine, or any rule or
141 regulation made by the commissioner under section ninety-seven or one hundred and six, or any
142 other law applicable to the conduct of the business, the commissioner may order the licensee to
143 cease and desist from the unlawful act or practice and take affirmative action as in his or her
144 judgment will effect the purpose of sections ninety-seven, ninety-eight, one hundred, one
145 hundred and one, one hundred and two, one hundred and four or one hundred and nine, or any
146 rule or regulation made by the commissioner under section ninety-seven or one hundred and six,
147 or any other law applicable to the conduct of the business.

148 (b) If the commissioner makes written findings of fact that the public interest will be
149 irreparably harmed by delay in issuing an order under section (a) the commissioner may issue a
150 temporary cease and desist order. Upon the entry of a temporary cease and desist order, the
151 commissioner shall promptly notify, in writing, the licensee affected thereby that the order has
152 been so entered, the reasons therefor, and that within 20 days after receipt of a written request
153 from the licensee, the matter will be scheduled for a hearing to determine whether or not the
154 temporary order shall become permanent and final. If no hearing is requested and none is ordered
155 by the commissioner, the order shall remain in effect until it is modified or vacated by the
156 commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of and
157 opportunity for a hearing to the licensee subject to the order, shall, by written finding of facts and
158 conclusions of law, vacate, modify or make permanent the order.

159 (c) No order under this section, except an order issued pursuant to subsection (b), may be
160 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
161 modify an order under this section upon finding that the conditions which required the an order
162 have changed and that it is in the public interest to so vacate or modify.

163 Any order issued pursuant to this section shall be subject to review as provided in chapter
164 thirty A.

165 Section 103B. The commissioner may enforce the provisions of section ninety-six
166 through one hundred and fourteen A, or restrain any violations thereof, by filing a civil action in
167 any court of competent jurisdiction.

168 SECTION 7. Chapter 140 of the General Laws, as so appearing, is hereby amended by
169 adding after section 113 the following two sections:—

170 Section 113A. (a) Whenever the commissioner finds that any licensee or exempt person
171 under section ninety-six of this chapter has violated any provision of this chapter or any rule or
172 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
173 of the business of making small loans, the commissioner may, by order, in addition to any other
174 action authorized under this chapter or any rule or regulation made thereunder, impose a penalty
175 upon the person which shall not exceed \$5,000 for each violation, up to a maximum of \$100,000
176 for the violation plus the costs of investigation. The commissioner may impose a penalty which
177 shall not exceed \$5,000 for each violation of this chapter, or any rule or regulation adopted
178 thereunder, by a person other than a licensee or exempt person under section ninety-six of this
179 chapter, plus the costs of investigation.

180 (b) In addition to any other action authorized under this chapter or any rule of regulation
181 made thereunder, a licensee who violates the provisions of section one hundred may also be
182 punished by imprisonment for not more than one year. Each day the violation occurs or
183 continues shall be deemed a separate offense. Any loan made by any person so licensed in

184 violation of section one hundred may be declared void by the supreme judicial or superior court
185 in equity upon petition by the person to whom the loan was made.

186 (c) Nothing in this section shall limit the right of any individual or entity who has been
187 injured as a result of any violation of this chapter by a licensee, or any person other than a
188 licensee or exempt person under section ninety-six of this chapter, to bring an action to recover
189 damages or restitution in a court of competent jurisdiction.

190 (d) Any findings or order issued by the commissioner pursuant to this section shall be
191 subject to review as provided in chapter thirty A.

192 Section 113B. (a) Whenever the commissioner determines that any person has, directly or
193 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
194 applicable to the conduct of the business of making small loans; or any order issued by the
195 commissioner under this chapter or any written agreement entered between the licensee and the
196 commissioner; the commissioner may serve upon the person a written notice of intention:

197 (1) to prohibit the person from performing in the capacity of a principal employee on
198 behalf of any licensee for a period of time that the commissioner deems necessary;

199 (2) to prohibit the person from applying for or obtaining a license from the commissioner
200 for a period up to 36 months following the effective date of an order issued under subsection (b)
201 or (c); or

202 (3) to prohibit the person from any further participation, in any manner, in the conduct of
203 the affairs of a business making small loans in Massachusetts or to prohibit the person from

204 being employed by, an agent of, or operating on behalf of a licensee under this chapter or any
205 other business which requires a license from the commissioner.

206 (b) A written notice issued under subsection (a) shall contain a written statement of the
207 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
208 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
209 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
210 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
211 by a duly authorized representative, the party shall be deemed to have consented to the issuance
212 of an order of prohibition in accordance with the notice.

213 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
214 finds that any of the grounds specified in the notice have been established, the commissioner
215 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
216 appropriate.

217 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
218 person. The commissioner shall also serve a copy of the order upon the licensee of which the
219 person is an employee or on whose behalf the person is performing. The order shall remain in
220 effect and enforceable until it is modified, terminated, suspended, or set aside by the
221 commissioner or a court of competent jurisdiction.

222 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
223 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
224 part in the conduct of the affairs of a business making small loans in Massachusetts may not,
225 while the order is in effect, continue or commence to perform in the capacity of a principal

226 employee, or otherwise participate in any manner, if so prohibited by order of the commissioner,
227 in the conduct of the affairs of:

228 (1) any licensee under this chapter;

229 (2) any other business which requires a license from the commissioner; and

230 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
231 subsidiary thereof.

232 SECTION 8. Chapter 140 of the General Laws, as so appearing, is hereby amended by
233 striking section 114A and inserting in place thereof the following section:—

234 Section 114A. A bank as defined in section one of chapter one hundred sixty-seven, a
235 national banking association, a federally chartered credit union, a federal savings and loan
236 association, a federal savings bank, or any subsidiary of the above, or any bank, trust company,
237 savings bank, savings and loan association, or credit union organized under the laws of any other
238 state, or any subsidiary of the above, shall not be subject to the provisions of sections ninety-six
239 to one hundred fourteen, inclusive; provided, that the institutions may not take, receive, reserve
240 or charge interest, expenses and other considerations for making or securing any loan subject to
241 the provisions of section ninety-six in excess of those permitted by section one hundred. Any
242 loan subject to the provisions of section ninety-six made by any bank as defined in section one of
243 chapter one hundred sixty-seven, a national banking association, a federally-chartered credit
244 union, a federal savings and loan association, a federal savings bank, or any subsidiary of the
245 above, or any bank, trust company, savings bank, savings and loan association, or credit union
246 organized under the laws of any other state on which charges for interest, expenses and other
247 considerations exceed those permitted by section one hundred may be declared void by the

248 supreme judicial court or superior court in equity upon petition by the person to whom the loans
249 were made, and any bank as defined section one of chapter one hundred sixty-seven, a national
250 banking association, a federally chartered credit union, a federal savings and loan association, a
251 federal savings bank, or any subsidiary of the above, or any bank, trust company, savings bank,
252 savings and loan association, or credit union organized under the laws of any other state making
253 such a loan shall be subject to a fine of not more than \$1,000.

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

261 SECTION 9. Section 4 of chapter 167F of the General Laws, as amended by section 5 of
262 chapter 144 of the acts of 2012, is hereby amended by striking out the first paragraph and
263 inserting in place thereof the following paragraph:—

264 Any bank as defined in section one of chapter one hundred sixty-seven, a national
265 banking association, a federally-chartered credit union, a federal savings and loan association, a
266 federal savings bank, or any subsidiary of the above, any bank, trust company, savings bank,
267 savings and loan association, or credit union organized under the laws of any other state or any
268 subsidiary of the above, may engage directly in the business of selling, issuing or registering
269 checks or money orders for use primarily for personal, family, or household purposes, except all

270 of the institutions described above may engage in the business through agents who shall not be
271 deemed to be branches of the institutions. No person, other than the foregoing, shall engage in
272 such business directly or indirectly unless a sworn statement setting forth the person's name and
273 address, the names and business addresses of the person's agents, other than the financial
274 institutions described above, authorized to receive money and transact such business on the
275 person's behalf is filed annually, as of a date determined by the commissioner.

276 SECTION 10. Section 4 of Chapter 167F, as so appearing, is hereby further amended by
277 inserting after the fourth paragraph the following two paragraphs:—

278 The commissioner shall examine any person, to whom a certificate to engage in the
279 business of selling, issuing or registering checks or money orders has been issued, as the
280 commissioner deems necessary and in a manner the commissioner deems appropriate. The
281 commissioner shall preserve a full record of each examination of a check seller including a
282 statement of its condition. All records of investigations and reports of examinations by the
283 commissioner, including workpapers, information derived from the reports or responses to the
284 reports, and any copies thereof in the possession of any licensee under the supervision of the
285 commissioner, shall be confidential and privileged communications, shall not be subject to
286 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For
287 the purpose of this paragraph, records of investigation and reports of examinations shall include
288 records of investigation and reports of examinations conducted by a financial regulatory agency
289 of the federal government and any other state, and of any foreign government which are
290 considered confidential by the agency or foreign government and which are in possession of the
291 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
292 record protecting the confidentiality of any such record, other than any such record on file with

293 the court or filed in connection with the court proceeding, and the court may exclude the public
294 from any portion of the proceeding at which any such record may be disclosed. Copies of the
295 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
296 to any other person, organization or agency without prior written approval by the commissioner.
297 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
298 government, of other states, or of foreign countries, and any law enforcement agency, the
299 information, reports, inspections and statements relating to the licensees under the
300 commissioner's supervision.

301 The commissioner, or the commissioner's examiners or other assistants as the
302 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
303 other witnesses, and examine them relative to the affairs, transactions and condition of the
304 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
305 to appear and testify when so required or obstructs the person making the examination in the
306 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
307 imprisonment for not more than one year.

308 SECTION 11. Said section 4 of chapter 167F of the General Laws, as so appearing, is
309 hereby further amended by striking out the fifth paragraph.

310 SECTION 12. Chapter 167F of the General Laws, as so appearing, is hereby amended by
311 adding after section 4 the following two sections:—

312 Section 4A. (a) Whenever the commissioner finds that any licensee or exempt person
313 under section 4 of this chapter has violated any provision of this chapter or any rule or regulation
314 adopted thereunder, or any other law of the Commonwealth applicable to the conduct of the

315 business of selling, issuing or registering checks or money orders, the commissioner may, by
316 order, in addition to any other action authorized under this chapter or any rule or regulation made
317 thereunder, impose a penalty upon the person which shall not exceed \$5,000 for each violation,
318 up to a maximum of \$100,000 for the violation plus the costs of investigation. The commissioner
319 may impose a penalty which shall not exceed \$5,000 for each violation of this chapter, or any
320 rule or regulation adopted thereunder, by a person other than a licensee or exempt person under
321 section 4 of this chapter, plus the costs of investigation.

322 (b) Nothing in this section shall limit the right of any individual or entity who has been
323 injured as a result of any violation of this chapter by a licensee, or any person other than a
324 licensee or exempt person under section 4 of this chapter, to bring an action to recover damages
325 or restitution in a court of competent jurisdiction.

326 (c) Any findings or order issued by the commissioner pursuant to this section shall be
327 subject to review as provided in chapter thirty A.

328 Section 4B. (a) Whenever the commissioner determines that any person has, directly or
329 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
330 applicable to the conduct of the business of selling, issuing or registering checks or money
331 orders; or any order issued by the commissioner under this chapter or any written agreement
332 entered between the licensee and the commissioner; the commissioner may serve upon the
333 person a written notice of intention:

334 (1) to prohibit the person from performing in the capacity of a principal employee on
335 behalf of any licensee for a period of time that the commissioner deems necessary;

336 (2) to prohibit the person from applying for or obtaining a license from the commissioner
337 for a period up to 36 months following the effective date of an order issued under subsection (b)
338 or (c); or

339 (3) to prohibit the person from any further participation, in any manner, in the conduct of
340 the affairs of selling, issuing or registering checks or money orders in Massachusetts or to
341 prohibit the person from being employed by, an agent of, or operating on behalf of a licensee
342 under this chapter or any other business which requires a license from the commissioner.

343 (b) A written notice issued under subsection (a) shall contain a written statement of the
344 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
345 thereon. Such hearing shall be fixed for a date not more than 30 days after the date of service
346 upon the commissioner of the request for a hearing. If the person fails to submit a request for a
347 hearing within 20 days of service of notice under subsection (a), or otherwise fails to appear in
348 person or by a duly authorized representative, the party shall be deemed to have consented to the
349 issuance of an order of prohibition in accordance with the notice.

350 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
351 finds that any of the grounds specified in the notice have been established, the commissioner
352 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
353 appropriate.

354 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
355 person. The commissioner shall also serve a copy of the order upon the licensee of which the
356 person is an employee or on whose behalf the person is performing. The order shall remain in

357 effect and enforceable until it is modified, terminated, suspended, or set aside by the
358 commissioner or a court of competent jurisdiction.

359 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
360 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
361 part in the conduct of the affairs of business of selling, issuing or registering checks or money
362 orders in Massachusetts may not, while the order is in effect, continue or commence to perform
363 in the capacity of a principal employee, or otherwise participate in any manner, if so prohibited
364 by order of the commissioner, in the conduct of the affairs of:

365 (1) any licensee under this chapter;

366 (2) any other business which requires a license from the commissioner; and

367 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
368 subsidiary thereof.

369 SECTION 13. Chapter 169 of the General Laws, as so appearing, is hereby amended by
370 striking out Section 1 and inserting in place thereof the following section:—

371 Section 1. This chapter shall apply to all persons who engage or are financially interested
372 in the business of receiving deposits of money for the purpose of transmitting the same or
373 equivalents thereof to foreign countries, except banks as defined in section one of chapter one
374 hundred sixty-seven, a national banking association, a federally-chartered credit union, a federal
375 savings and loan association, a federal savings bank, or any bank, trust company, savings bank,
376 savings and loan association, or credit union organized under the law of any other state, or any
377 subsidiary of the above, persons doing business under section forty-three of chapter one hundred

378 sixty-seven, express companies having contracts with transportation companies for the operation
379 of an express service upon the lines of such companies or express companies doing an
380 international express business or global transportation companies or telegraph companies.

381 SECTION 14. Section 3 of chapter 169 of the General Laws, as amended by section 8 of
382 chapter 144 of the acts of 2012, is hereby amended by striking out the eighth, thirteenth and
383 fourteenth sentence.

384 SECTION 15. Section 10 of chapter 169, as so appearing, is hereby amended by inserting
385 after the second paragraph the following two paragraphs:—

386 The commissioner shall preserve a full record of each examination of a licensee including
387 a statement of its condition. All records of investigations and reports of examinations by the
388 commissioner, including workpapers, information derived from the reports or responses to the
389 reports, and any copies thereof in the possession of any licensee under the supervision of the
390 commissioner, shall be confidential and privileged communications, shall not be subject to
391 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For
392 the purpose of this paragraph, records of investigation and reports of examinations shall include
393 records of investigation and reports of examinations conducted by a financial regulatory agency
394 of the federal government and any other state, and of any foreign government which are
395 considered confidential by the agency or foreign government and which are in possession of the
396 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
397 record protecting the confidentiality in appropriate circumstances to protect the confidentiality of
398 any such record, other than any such record on file with the court or filed in connection with the
399 court proceeding, and the court may exclude the public from any portion of the proceeding at

400 which any such record may be disclosed. Copies of the reports of examination shall be furnished
401 to a licensee for its use only and shall not be exhibited to any other person, organization or
402 agency without prior written approval by the commissioner. The commissioner may, in his or her
403 discretion, furnish to regulatory agencies of the federal government, of other states, or of foreign
404 countries, and any law enforcement agency, the information, reports, inspections and statements
405 relating to the licensees under the commissioner's supervision.

406 The commissioner, or the commissioner's examiners, or other assistants as the
407 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
408 other witnesses, and examine them relative to the affairs, transactions and condition of the
409 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
410 to appear and testify when so required or obstructs the person making the examination in the
411 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
412 imprisonment for not more than one year.

413 SECTION 16. Chapter 169 of the General Laws is hereby amended by striking our
414 section 16, as so appearing, and inserting in place thereof, the following two sections:—

415 Section 16. (a) Whenever the commissioner finds that any licensee or exempt person
416 under any provision of this chapter has violated any provision of this chapter or any rule or
417 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
418 of the business of receiving deposits of money for the purpose of transmitting the same or
419 equivalents thereof to foreign countries, the commissioner may, by order, in addition to any other
420 action authorized under this chapter or any rule or regulation made thereunder, impose a penalty
421 upon the person which shall not exceed \$5,000 for each violation, up to a maximum of \$100,000

422 for the violation plus the costs of investigation. The commissioner may impose a penalty which
423 shall not exceed \$5,000 for each violation of this chapter, or any rule or regulation adopted
424 thereunder, by a person other than a licensee or exempt person under any provision of this
425 chapter, plus the costs of investigation.

426 (b) In addition to any other action authorized under this chapter or any rule of regulation
427 made thereunder, whoever violates any provision of this chapter or any rule or regulation made
428 hereunder by the commissioner may be punished by imprisonment for not more than one year.

429 (c) Nothing in this section shall limit the right of any individual or entity who has been
430 injured as a result of any violation of this chapter by a licensee, or any person other than a
431 licensee or exempt person under any provision of this chapter, to bring an action to recover
432 damages or restitution in a court of competent jurisdiction.

433 (d) Any findings or order issued by the commissioner pursuant to this section shall be
434 subject to review as provided in chapter thirty A.

435 Section 17. (a) Whenever the commissioner determines that any person has, directly or
436 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
437 applicable to the conduct of the business of receiving deposits of money for the purpose of
438 transmitting the same or equivalents thereof to foreign countries; or any order issued by the
439 commissioner under this chapter or any written agreement entered between the licensee and the
440 commissioner; the commissioner may serve upon the person a written notice of intention:

441 (1) to prohibit the person from performing in the capacity of a principal employee on
442 behalf of any licensee for a period of time that the commissioner deems necessary;

443 (2) to prohibit the person from applying for or obtaining a license from the commissioner
444 for a period up to 36 months following the effective date of an order issued under subsection (b)
445 or (c); or

446 (3) to prohibit such person from any further participation, in any manner, in the conduct
447 of the affairs of a business of receiving deposits of money for the purpose of transmitting the
448 same or equivalents thereof to foreign countries in Massachusetts or to prohibit such person from
449 being employed by, an agent of, or operating on behalf of a licensee under this chapter or any
450 other business which requires a license from the commissioner.

451 (b) A written notice issued under subsection (a) shall contain a written statement of the
452 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
453 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
454 the commissioner of such request for a hearing. If such person fails to submit a request for a
455 hearing within 20 days of service of notice under subsection (a), or otherwise fails to appear in
456 person or by a duly authorized representative, such party shall be deemed to have consented to
457 the issuance of an order of such prohibition in accordance with the notice.

458 (c) In the event of such consent under subsection (b), or if after a hearing the
459 commissioner finds that any of the grounds specified in such notice have been established, the
460 commissioner may issue an order of prohibition in accordance with subsection (a) as the
461 commissioner finds appropriate.

462 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
463 person. The commissioner shall also serve a copy of the order upon the licensee of which the
464 person is an employee or on whose behalf the person is performing. The order shall remain in

465 effect and enforceable until it is modified, terminated, suspended, or set aside by the
466 commissioner or a court of competent jurisdiction.

467 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
468 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
469 part in the conduct of the affairs of a business of receiving deposits of money for the purpose of
470 transmitting the same or equivalents thereof to foreign countries in Massachusetts may not, while
471 such order is in effect, continue or commence to perform in the capacity of a principal employee,
472 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
473 conduct of the affairs of:

474 (1) any licensee under this chapter;

475 (2) any other business which requires a license from the commissioner; and

476 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
477 subsidiary thereof.

478 SECTION 17. Section 2 of chapter 169A of the General Laws, as so appearing, is hereby
479 amended, in line 7, by striking out the word “bank.” and inserting in place thereof the words:—
480 bank or any bank, trust company, savings bank, savings and loan association, or credit union
481 organized under the laws of any other state, or any subsidiary of the above.

482 SECTION 18. Section 5 of chapter 169A, as so appearing, is hereby amended by striking
483 out the third and fourth sentences.

484 SECTION 19. Section 10 of chapter 169A, as so appearing, is hereby amended by adding
485 the following two paragraphs:—

486 The commissioner shall preserve a full record of each such examination of a licensee
487 including a statement of its condition. All records of investigations and reports of examinations
488 by the commissioner, including workpapers, information derived from such reports or responses
489 to such reports, and any copies thereof in the possession of any licensee under the supervision of
490 the commissioner, shall be confidential and privileged communications, shall not be subject to
491 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For
492 the purpose of this paragraph, records of investigation and reports of examinations shall include
493 records of investigation and reports of examinations conducted by a financial regulatory agency
494 of the federal government and any other state, and of any foreign government which are
495 considered confidential by such agency or foreign government and which are in possession of the
496 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
497 record protecting the confidentiality of any such record, other than any such record on file with
498 the court or filed in connection with the court proceeding, and the court may exclude the public
499 from any portion of the proceeding at which any such record may be disclosed. Copies of such
500 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
501 to any other person, organization or agency without prior written approval by the commissioner.
502 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
503 government, of other states, or of foreign countries, and any law enforcement agency, such
504 information, reports, inspections and statements relating to the licensees under the
505 commissioner's supervision.

506 The commissioner, or the commissioner's examiners or such other assistants as the
507 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
508 other witnesses, and examine them relative to the affairs, transactions and condition of the

509 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
510 to appear and testify when so required or obstructs the person making such examination in the
511 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
512 imprisonment for not more than one year.

513 SECTION 20. Chapter 169A of the General Laws, as so appearing, is hereby amended by
514 striking out section 13 and inserting in place thereof the following two sections:—

515 Section 13. (a) Whenever the commissioner finds that any licensee or exempt person
516 under section two of this chapter has violated any provision of this chapter or any rule or
517 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
518 of the business of cashing checks, drafts or money orders, the commissioner may, by order, in
519 addition to any other action authorized under this chapter or any rule or regulation made
520 thereunder, impose a penalty upon such person which shall not exceed \$5,000 for each violation,
521 up to a maximum of \$100,000 for such violation plus the costs of investigation. The
522 commissioner may impose a penalty which shall not exceed \$5,000 for each violation of this
523 chapter, or any rule or regulation adopted thereunder, by a person other than a licensee or exempt
524 person under section two of this chapter, plus the costs of investigation.

525 (b) In addition to any other action authorized under this chapter or any rule of regulation
526 made thereunder, whoever violates any provision of section two or any rule or regulation made
527 thereunder by the commissioner may be punished by imprisonment for not more than 6 months.
528 Each day a violation continues shall be deemed a separate offense. The penalty provision of this
529 section shall be in addition to, and not in lieu of, any other provision of law applicable to a
530 licensee or other person for violating section two or any rule or regulation made thereunder.

531 (c) Nothing in this section shall limit the right of any individual or entity who has been
532 injured as a result of any violation of this chapter by a licensee, or any person other than a
533 licensee or exempt person under section two of this chapter, to bring an action to recover
534 damages or restitution in a court of competent jurisdiction.

535 (d) Any findings or order issued by the commissioner pursuant to this section shall be
536 subject to review as provided in chapter thirty A.

537 Section 14. (a) Whenever the commissioner determines that any person has, directly or
538 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
539 applicable to the conduct of the business of cashing checks, drafts or money orders; or any order
540 issued by the commissioner under this chapter or any written agreement entered between such
541 licensee and the commissioner; the commissioner may serve upon such person a written notice of
542 intention:

543 (1) to prohibit such person from performing in the capacity of a principal employee on
544 behalf of any licensee for a period of time that the commissioner deems necessary;

545 (2) to prohibit the person from applying for or obtaining a license from the commissioner
546 for a period up to 36 months following the effective date of an order issued under subsection (b)
547 or (c); or

548 (3) to prohibit such person from any further participation, in any manner, in the conduct
549 of the affairs of person or entity engaged in the cashing of checks, drafts or money orders in
550 Massachusetts or to prohibit such person from being employed by, an agent of, or operating on
551 behalf of a licensee under this chapter or any other business which requires a license from the
552 commissioner.

553 (b) A written notice issued under subsection (a) shall contain a written statement of the
554 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
555 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
556 the commissioner of such request for a hearing. If such person fails to submit a request for a
557 hearing within 20 days of service of notice under subsection (a), or otherwise fails to appear in
558 person or by a duly authorized representative, such party shall be deemed to have consented to
559 the issuance of an order of such prohibition in accordance with the notice.

560 (c) In the event of such consent under subsection (b), or if after a hearing the
561 commissioner finds that any of the grounds specified in such notice have been established, the
562 commissioner may issue an order of prohibition in accordance with subsection (a) as the
563 commissioner finds appropriate.

564 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
565 person. The commissioner shall also serve a copy of the order upon the licensee of which the
566 person is an employee or on whose behalf the person is performing. The order shall remain in
567 effect and enforceable until it is modified, terminated, suspended, or set aside by the
568 commissioner or a court of competent jurisdiction.

569 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
570 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
571 part in the conduct of the affairs of a person or entity engaged in the cashing of checks, drafts or
572 money orders in Massachusetts may not, while such order is in effect, continue or commence to
573 perform in the capacity of a principal employee, or otherwise participate in any manner, if so
574 prohibited by order of the commissioner, in the conduct of the affairs of:

- 575 (1) any licensee under this chapter;
- 576 (2) any other business which requires a license from the commissioner; and
- 577 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
578 subsidiary thereof.

579 SECTION 21. Section 1 of chapter 255B of the General Laws, as so appearing, is hereby
580 amended by striking out the definition of “Sales finance company” and inserting in place thereof
581 the following definition:— "Sales finance company", (1) a bank as defined in section one of
582 chapter one hundred and sixty-seven, a national banking association, federal savings bank,
583 federal savings and loan association, federal credit union, or any bank, trust company, savings
584 bank, savings and loan association or credit union organized under the laws of any other state of
585 the United States, or any subsidiary of the above;

586 (2) any person engaged, in whole or in part, in the business of purchasing retail
587 installment contracts from one or more retail sellers; and

588 (3) a retail seller engaged, in whole or in part, in the business of holding retail installment
589 contracts acquired from retail buyers. The term "sales finance company" does not include the
590 pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

591 SECTION 22. Section 2 of chapter 255B, as amended by section 9 of chapter 144 of the
592 acts of 2012, is hereby amended by striking out the fourth and fifth sentences.

593 SECTION 23. Section 3 of Chapter 255B, as so appearing, is hereby amended by
594 inserting after the first paragraph the following two paragraphs:—

595 The commissioner shall preserve a full record of each such examination of a licensee
596 including a statement of its condition. All records of investigations and reports of examinations
597 by the commissioner, including workpapers, information derived from such reports or responses
598 to such reports, and any copies thereof in the possession of any licensee under the supervision of
599 the commissioner, shall be confidential and privileged communications, shall not be subject to
600 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For
601 the purpose of this paragraph, records of investigation and reports of examinations shall include
602 records of investigation and reports of examinations conducted by a financial regulatory agency
603 of the federal government and any other state, and of any foreign government which are
604 considered confidential by such agency or foreign government and which are in possession of the
605 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
606 record protecting the confidentiality of any such record, other than any such record on file with
607 the court or filed in connection with the court proceeding, and the court may exclude the public
608 from any portion of the proceeding at which any such record may be disclosed. Copies of such
609 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
610 to any other person, organization or agency without prior written approval by the commissioner.
611 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
612 government, of other states, or of foreign countries, and any law enforcement agency, such
613 information, reports, inspections and statements relating to the licensees under the
614 commissioner's supervision.

615 The commissioner, or the commissioner's examiners, or such other assistants as the
616 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
617 other witnesses, and examine them relative to the affairs, transactions and condition of the

618 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
619 to appear and testify when so required or obstructs the person making such examination in the
620 performance of their duty, shall be punished by a fine of not more than \$1000 or by
621 imprisonment for not more than one year.

622 SECTION 24. Section 4 of said chapter 255B of the General Laws, as so appearing, is
623 hereby amended by adding the following sentence:— Each day such violation occurs or
624 continues shall be deemed a separate offense.

625 SECTION 25. Chapter 255B of the General Laws, as so appearing, is hereby amended by
626 striking out section 7, and inserting in place thereof the following section:—

627 Section 7. The commissioner may suspend or revoke any license issued pursuant to this
628 chapter if the commissioner finds that:

629 (i) the licensee has violated any provision of this chapter or any rule or regulation
630 adopted hereunder, or any other law applicable to the conduct of its business; or

631 (ii) any fact or condition exists which, if it had existed at the time of the original
632 application for such license, would have warranted the commissioner in refusing to issue such
633 license.

634 Except as provided in section eight, no license shall be revoked or suspended except after
635 notice and a hearing thereon pursuant to chapter thirty A.

636 A licensee may surrender a license by delivering to the commissioner written notice that
637 it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability
638 of the licensee for acts committed before such surrender.

639 No revocation, suspension or surrender of any license shall impair or affect the obligation
640 of any pre-existing lawful contract between the licensee and any person.

641 SECTION 26. Chapter 255B of the General Laws, as so appearing, is hereby amended by
642 striking out section 8 and inserting in place thereof the following two sections:—

643 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for a
644 hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
645 violation of a provision of this chapter or a rule, regulation or order hereunder, the commissioner
646 may order such licensee to cease and desist from such unlawful act or practice and take such
647 affirmative action as in his or her judgment will effect the purposes of this chapter.

648 (b) If the commissioner makes written findings of fact that the public interest will be
649 irreparably harmed by delay in issuing an order under subsection (a) the commissioner may issue
650 a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the
651 commissioner shall promptly notify, in writing, the licensee affected thereby that such order has
652 been so entered, the reasons therefor, and that within 20 days after the receipt of a written request
653 from such licensee, the matter will be scheduled for a hearing to determine whether or not such
654 temporary order shall become permanent and final. If no such hearing is requested and none is
655 ordered by the commissioner, the order shall remain in effect until it is modified or vacated by
656 the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of
657 and opportunity for a hearing to the licensee subject to the order, shall, by written finding of facts
658 and conclusions of law, vacate, modify or make permanent the order.

659 (c) No order under this section, except an order issued pursuant to subsection (b), may be
660 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or

661 modify an order under this section upon finding that the conditions which required such an order
662 have changed and that it is in the public interest to so vacate or modify.

663 Any order issued pursuant to this section shall be subject to review as provided in chapter
664 thirty A.

665 Section 8A. The commissioner may enforce the provisions of this chapter, or restrain any
666 violations thereof, by filing a civil action in any court of competent jurisdiction.

667 SECTION 27. Chapter 255B of the General Laws, as so appearing, is hereby amended by
668 adding after section 25 the following two sections:—

669 Section 26. (a) Whenever the commissioner finds that any licensee or exempt person
670 under section two of this chapter has violated any provision of this chapter or any rule or
671 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
672 of the business of a sales finance company, the commissioner may, by order, in addition to any
673 other action authorized under this chapter or any rule or regulation made thereunder, impose a
674 penalty upon such person which shall not exceed \$5,000 for each violation, up to a maximum of
675 \$100,000 for such violation plus the costs of investigation. The commissioner may impose a
676 penalty which shall not exceed \$5,000 for each violation of this chapter, or any rule or regulation
677 adopted thereunder, by a person other than a licensee or exempt person under section two of this
678 chapter, plus the costs of investigation.

679 (b) In addition to any other action authorized under this chapter or any rule of regulation
680 made thereunder, whoever violates any provision of this chapter or any rule or regulation made
681 thereunder by the commissioner may also be punished by imprisonment for not more than 6
682 months. The penalty provision of this section shall be in addition to, and not in lieu of, any other

683 provision of law applicable to a licensee or other person for violating provision of this chapter or
684 any rule or regulation made thereunder.

685 (c) Nothing in this section shall limit the right of any individual or entity who has been
686 injured as a result of any violation of this chapter by a licensee, or any person other than a
687 licensee or exempt person under section two of this chapter, to bring an action to recover
688 damages or restitution in a court of competent jurisdiction.

689 (d) Any findings or order issued by the commissioner pursuant to this section shall be
690 subject to review as provided in chapter thirty A.

691 Section 27. (a) Whenever the commissioner determines that any person has, directly or
692 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
693 applicable to the conduct of the business of a sales finance company; or any order issued by the
694 commissioner under this chapter or any written agreement entered between such licensee and the
695 commissioner; the commissioner may serve upon such person a written notice of intention:

696 (1) to prohibit such person from performing in the capacity of a principal employee on
697 behalf of any licensee for a period of time that the commissioner deems necessary;

698 (2) to prohibit the person from applying for or obtaining a license from the commissioner
699 for a period up to 36 months following the effective date of an order issued under subsection (b)
700 or (c); or

701 (3) to prohibit the person from any further participation, in any manner, in the conduct of
702 the affairs of a sales finance company in Massachusetts or to prohibit the person from being

703 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
704 business which requires a license from the commissioner.

705 (b) A written notice issued under subsection (a) shall contain a written statement of the
706 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
707 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
708 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
709 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
710 by a duly authorized representative, the party shall be deemed to have consented to the issuance
711 of an order of prohibition in accordance with the notice.

712 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
713 finds that any of the grounds specified in such notice have been established, the commissioner
714 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
715 appropriate.

716 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
717 person. The commissioner shall also serve a copy of the order upon the licensee of which the
718 person is an employee or on whose behalf the person is performing. The order shall remain in
719 effect and enforceable until it is modified, terminated, suspended, or set aside by the
720 commissioner or a court of competent jurisdiction.

721 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
722 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
723 part in the conduct of the affairs of a sales finance company in Massachusetts may not, while the
724 order is in effect, continue or commence to perform in the capacity of a principal employee, or

725 otherwise participate in any manner, if so prohibited by order of the commissioner, in the
726 conduct of the affairs of:

727 (1) any licensee under this chapter;

728 (2) any other business which requires a license from the commissioner; and

729 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
730 subsidiary thereof.

731 SECTION 28. Chapter 255C of the General Laws, as amended by section 11 of chapter
732 144 of the acts of 2012, is hereby amended by striking out section 2 and inserting in place
733 thereof the following section:—

734 Section 2. No person, other than a bank as defined in section one of chapter one hundred
735 sixty-seven, a national banking association, a federally-chartered credit union, a federal savings
736 and loan association, a federal savings bank, or any subsidiary of the above, or a bank, a trust
737 company, savings bank, savings and loan association or credit union organized under the laws of
738 any other state, or any subsidiary of the above, a sales finance company, as defined in section
739 one of chapter two hundred fifty-five B, and a company licensed to carry on the business of
740 making small loans, shall engage in the business of premium finance agency unless licensed by
741 the commissioner, as provided in section three; provided, however, that no property and casualty
742 insurance agent or broker, including an insurance agent or insurance broker conducting an
743 insurance premium financing agency business under a subsidiary or different company name,
744 who provides premium financing only to their own customers for purposes of financing payment
745 of premiums on contracts of insurance, which contracts of insurance are exclusively limited to
746 commercial insurance policies, shall be required to be licensed pursuant to this section or any

747 other section of this chapter. The commissioner may adopt, amend or repeal rules and
748 regulations, which may include an adequate capitalization requirement for sales finance
749 companies, to aid in the administration and enforcement of this chapter.

750 The license shall allow the holder to maintain only one office from which the business
751 may be conducted, but more than one license may be issued to any person. Any change of
752 location of an office of a licensee shall require the prior approval of the commissioner. The
753 request for relocation shall be in writing setting forth the reason or reasons for the request, and
754 shall be accompanied by a relocation investigation fee to be determined annually by the secretary
755 of administration and finance under section 3B of chapter 7. If an applicant has more than one
756 office, the applicant may obtain a license for each office from which the applicant intends to
757 conduct the business.

758 SECTION 29. Section 4 of chapter 255C, as so appearing, is hereby amended by striking
759 out the second sentence.

760 SECTION 30. Section 4 of chapter 255C is hereby further amended by adding the
761 following paragraph: —

762 If a licensee intends to carry on the business at any place in addition to the address on the
763 license, the licensee shall so notify the commissioner, in writing, at least 30 days prior thereto,
764 and the licensee shall pay a fee for the additional location in an amount to be determined
765 annually by the commissioner of administration under the provision of section three B of chapter
766 seven. The license shall not be transferable or assignable and shall expire annually on a date
767 determined by the commissioner.

768 SECTION 31. Chapter 255C of the General Laws, as so appearing, is hereby amended by
769 striking out section 5, and inserting in place thereof the following three sections:—

770 Section 5. The commissioner may suspend or revoke any license issued pursuant to this
771 chapter if the commissioner finds that:

772 (i) the licensee has violated any provision of this chapter or any rule or regulation
773 adopted hereunder, or any other law applicable to the conduct of its business; or

774 (ii) any fact or condition exists which, if it had existed at the time of the original
775 application for the license, would have warranted the commissioner in refusing to issue the
776 license.

777 The commissioner shall have sufficient cause to suspend or revoke a license whenever
778 the commissioner learns from the commissioner of insurance or from any other source that the
779 licensee has failed to return the full amount of a return premium to the person whose insurance
780 policy has been cancelled or to the person's assignee, as required by section one hundred and
781 seventy-six A of chapter one hundred and seventy-five.

782 A licensee may surrender a license by delivering to the commissioner written notice that
783 it thereby surrenders the license, but the surrender shall not affect the civil or criminal liability of
784 the licensee for acts committed before the surrender. A revocation or suspension or surrender of
785 any license shall not impair or affect the obligation of an insured under any lawful premium
786 finance agreement previously acquired or held by the licensee.

787 No revocation, suspension or surrender of any license shall impair or affect the obligation
788 of any pre-existing lawful contract between the licensee and any person.

789 Whenever the commissioner revokes or suspends a license, the commissioner shall
790 forthwith execute in duplicate a written order to that effect, and shall file one copy of the order in
791 the office of the secretary of state and mail one copy to the licensee. A suspension or revocation
792 of a license shall not be subject to the provisions of chapter thirty A.

793 Section 5A. (a) If the commissioner determines, after giving notice of and opportunity for
794 a hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
795 violation of a provision of this chapter or a rule, regulation or order hereunder, the commissioner
796 may order the licensee to cease and desist from the unlawful act or practice and take affirmative
797 action as in his or her judgment will effect the purposes of this chapter.

798 (b) If the commissioner makes written findings of fact that the public interest will be
799 irreparably harmed by delay in issuing an order under subsection (a) the commissioner may issue
800 a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the
801 commissioner shall promptly notify, in writing, the licensee affected thereby that the order has
802 been so entered, the reasons therefor, and that within 2 days after the receipt of a written request
803 from the licensee, the matter will be scheduled for hearing to determine whether or not the
804 temporary order shall become permanent and final. If no hearing is requested and none is ordered
805 by the commissioner, the order shall remain in effect until it is modified or vacated by the
806 commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of and
807 opportunity for a hearing to the licensee subject to the order, shall, by written finding of facts and
808 conclusions of law, vacate, modify or make permanent the order.

809 (c) No order under this section, except an order issued pursuant to subsection (b), may be
810 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or

811 modify an order under this section upon finding that the conditions which required the order
812 have changed and that it is in the public interest to so vacate or modify.

813 Any order issued pursuant to this section shall be subject to review as provided in chapter
814 thirty A.

815 Section 5B. The commissioner may enforce the provisions of this chapter, or restrain any
816 violations thereof, by filing a civil action in any court of competent jurisdiction.

817 SECTION 32. Section 6 of chapter 255C, as amended by section 14 of chapter 44 of the
818 acts of 2012, is hereby amended by striking out the second paragraph and inserting in place
819 thereof the following two paragraphs:—

820 The commissioner shall preserve a full record of each examination of a licensee including
821 a statement of its condition. All records of investigations and reports of examinations by the
822 commissioner, including workpapers, information derived from the reports or responses to the
823 reports, and any copies thereof in the possession of any licensee under the supervision of the
824 commissioner, shall be confidential and privileged communications, shall not be subject to
825 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For
826 the purpose of this paragraph, records of investigation and reports of examinations shall include
827 records of investigation and reports of examinations conducted by a financial regulatory agency
828 of the federal government and any other state, and of any foreign government which are
829 considered confidential by the agency or foreign government and which are in possession of the
830 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
831 record protecting the confidentiality of any such record, other than any such record on file with
832 the court or filed in connection with the court proceeding, and the court may exclude the public

833 from any portion of the proceeding at which any such record may be disclosed. Copies of such
834 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
835 to any other person, organization or agency without prior written approval by the commissioner.
836 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
837 government, of other states, or of foreign countries, and any law enforcement agency, the
838 information, reports, inspections and statements relating to the licensees under the
839 commissioner's supervision.

840 The commissioner, or the commissioner's examiners or other assistants as the
841 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
842 other witnesses, and examine them relative to the affairs, transactions and condition of the
843 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
844 to appear and testify when so required or obstructs the person making the examination in the
845 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
846 imprisonment for not more than one year.

847 SECTION 33. Section 9 of chapter 255C of the General Laws, as so appearing, is hereby
848 amended by striking out the first paragraph:—

849 SECTION 34. Chapter 255C of the General Laws, as so appearing, is hereby amended by
850 adding after section 23 the following two sections:—

851 Section 24. (a) Whenever the commissioner finds that any licensee or exempt person
852 under section two of this chapter has violated any provision of this chapter or any rule or
853 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
854 of the business of a premium finance agency, the commissioner may, by order, in addition to any

855 other action authorized under this chapter or any rule or regulation made thereunder, impose a
856 penalty upon the person which shall not exceed \$5,000 for each violation, up to a maximum of
857 \$100,000 for the violation plus the costs of investigation. The commissioner may impose a
858 penalty which shall not exceed \$5,000 for each violation of this chapter, or any rule or regulation
859 adopted thereunder, by a person other than a licensee or exempt person under section two of this
860 chapter, plus the costs of investigation.

861 (b) In addition to any other action authorized under this chapter or any rule of regulation
862 made thereunder, whoever violates any provision of this chapter, or knowingly makes any
863 incorrect statement of a material fact in any application, report or statement filed pursuant to this
864 chapter, or knowingly omits to state any material fact necessary to give the commissioner any
865 information lawfully required, may be punished by imprisonment for not more than 6 months.
866 The penalty provision of this section shall be in addition to, and not in lieu of, any other
867 provision of law applicable to a licensee or other person for violating any provision of this
868 chapter or any rule or regulation made thereunder.

869 (c) Nothing in this section shall limit the right of any individual or entity who has been
870 injured as a result of any violation of this chapter by a licensee, or any person other than a
871 licensee or exempt person under section two of this chapter, to bring an action to recover
872 damages or restitution in a court of competent jurisdiction.

873 (d) Any findings or order issued by the commissioner pursuant to this section shall be
874 subject to review as provided in chapter thirty A.

875 Section 25. (a) Whenever the commissioner determines that any person has, directly or
876 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,

877 applicable to the conduct of the business of a premium finance agency; or any order issued by
878 the commissioner under this chapter or any written agreement entered between the licensee and
879 the commissioner; the commissioner may serve upon the person a written notice of intention:

880 (1) to prohibit the person from performing in the capacity of a principal employee on
881 behalf of any licensee for a period of time that the commissioner deems necessary;

882 (2) to prohibit the person from applying for or obtaining a license from the commissioner
883 for a period up to 36 months following the effective date of an order issued under subsection (b)
884 or (c); or

885 (3) to prohibit the person from any further participation, in any manner, in the conduct of
886 the affairs of a premium finance agency in Massachusetts or to prohibit the person from being
887 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
888 business which requires a license from the commissioner.

889 (b) A written notice issued under subsection (a) shall contain a written statement of the
890 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
891 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
892 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
893 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
894 by a duly authorized representative, the party shall be deemed to have consented to the issuance
895 of an order of prohibition in accordance with the notice.

896 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
897 finds that any of the grounds specified in the notice have been established, the commissioner

898 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
899 appropriate.

900 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
901 person. The commissioner shall also serve a copy of the order upon the licensee of which the
902 person is an employee or on whose behalf the person is performing. The order shall remain in
903 effect and enforceable until it is modified, terminated, suspended, or set aside by the
904 commissioner or a court of competent jurisdiction.

905 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
906 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
907 part in the conduct of the affairs of a premium finance agency in Massachusetts may not, while
908 the order is in effect, continue or commence to perform in the capacity of a principal employee,
909 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
910 conduct of the affairs of:

911 (1) any licensee under this chapter;

912 (2) any other business which requires a license from the commissioner; and

913 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
914 subsidiary thereof.

915 SECTION 35. Section 1 of chapter 255D of the General Laws, as so appearing, is hereby
916 amended by striking out the definition of “Sales finance company” in lines 91 through 98,
917 inclusive, and inserting in place thereof the following definition:—

918 “Sales finance company”

919 (1) a bank as defined in section one of chapter one hundred and sixty-seven, or a national
920 banking association or a savings and loan association, federal savings bank, federal savings and
921 loan association, federal credit union, or any bank, trust company, savings bank, savings and
922 loan association or credit union organized under the laws of any other state of the United States,
923 or any subsidiary of the above,

924 (2) any person other than an installment seller engaged, in whole or in part, in the
925 business of purchasing retail installment sale agreements or revolving credit agreements of one
926 or more retail sellers. The term “sales finance company” shall not include the pledgee of an
927 aggregate number of such agreements to secure a bona fide loan thereon.

928 SECTION 36. The first paragraph of section 2 of chapter 255D, as amended by section
929 14 of chapter 144 of the acts of 2012, is hereby amended by striking out the fourth and fifth
930 sentences.

931 SECTION 37. Section 2 of chapter 255D, as so appearing, is hereby further amended by
932 striking out the ninth sentence.

933 SECTION 38. Section 3 of chapter 255D of the General Laws, as so appearing, is hereby
934 amended by inserting after the first paragraph the following two paragraphs:—

935 The commissioner shall preserve a full record of each examination of a licensee including
936 a statement of its condition. All records of investigations and reports of examinations by the
937 commissioner, including workpapers, information derived from the reports or responses to the
938 reports, and any copies thereof in the possession of any licensee under the supervision of the
939 commissioner, shall be confidential and privileged communications, shall not be subject to
940 subpoena and shall not be a public record under clause twenty-sixth of section 7 of chapter 4. For

941 the purpose of this paragraph, records of investigation and reports of examinations shall include
942 records of investigation and reports of examinations conducted by a financial regulatory agency
943 of the federal government and any other state, and of any foreign government which are
944 considered confidential by the agency or foreign government and which are in possession of the
945 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
946 record protecting the confidentiality of any such record, other than any such record on file with
947 the court or filed in connection with the court proceeding, and the court may exclude the public
948 from any portion of the proceeding at which any such record may be disclosed. Copies of such
949 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
950 to any other person, organization or agency without prior written approval by the commissioner.
951 The commissioner may, in his or her discretion, furnish to regulatory agencies of the federal
952 government, of other states, or of foreign countries, and any law enforcement agency, the
953 information, reports, inspections and statements relating to the licensees under the
954 commissioner's supervision.

955 The commissioner, or the commissioner's examiners, or other assistants as the
956 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
957 other witnesses, and examine them relative to the affairs, transactions and condition of the
958 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
959 to appear and testify when so required or obstructs the person making the examination in the
960 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
961 imprisonment for not more than one year.

962 SECTION 39. Chapter 255D of the General Laws, as so appearing, is hereby amended by
963 striking out section 7 as so appearing, and inserting in place thereof the following section:—

964 Section 7. The commissioner may suspend or revoke any license issued pursuant to this
965 chapter if the commissioner finds that:

966 (i) the licensee has violated any provision of this chapter or any rule or regulation
967 adopted hereunder, or any other law applicable to the conduct of its business; or

968 (ii) any fact or condition exists which, if it had existed at the time of the original
969 application for the license, would have warranted the commissioner in refusing to issue the
970 license.

971 Except as provided in section eight, no license shall be revoked or suspended except after
972 notice and a hearing thereon pursuant to chapter thirty A.

973 A licensee may surrender a license by delivering to the commissioner written notice that
974 it thereby surrenders the license, but the surrender shall not affect the civil or criminal liability of
975 the licensee for acts committed before the surrender.

976 No revocation, suspension or surrender of any license shall impair or affect the obligation
977 of any pre-existing lawful contract between the licensee and any person.

978 SECTION 40. Said chapter 255D of the General Laws, as so appearing, is hereby further
979 amended by striking out section 8, as so appearing, and inserting in place thereof the following
980 two sections:—

981 Section 8. (a) If the commissioner determines, after giving notice of and opportunity for a
982 hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
983 violation of a provision of this chapter or a rule, regulation or order hereunder, the commissioner

984 may order the licensee to cease and desist from the unlawful act or practice and take affirmative
985 action as in his or her judgment will effect the purposes of this chapter.

986 (b) If the commissioner makes written findings of fact that the public interest will be
987 irreparably harmed by delay in issuing an order under subsection (a) the commissioner may issue
988 a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the
989 commissioner shall promptly notify, in writing, the licensee affected thereby that the order has
990 been so entered, the reasons therefor, and that within 20 days after the receipt of a written request
991 from the licensee, the matter will be scheduled for hearing to determine whether or not the
992 temporary order shall become permanent and final. If no hearing is requested and none is ordered
993 by the commissioner, the order shall remain in effect until it is modified or vacated by the
994 commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of and
995 opportunity for a hearing to the licensee subject to the order, shall, by written finding of facts and
996 conclusions of law, vacate, modify or make permanent the order.

997 (c) No order under this section, except an order issued pursuant to subsection (b), may be
998 entered without prior notice of and opportunity for a hearing. The commissioner may vacate or
999 modify an order under this section upon finding that the conditions which required the order
1000 have changed and that it is in the public interest to so vacate or modify.

1001 Any order issued pursuant to this section shall be subject to review as provided in chapter
1002 thirty A.

1003 Section 8A. The commissioner may enforce the provisions of this chapter, or restrain any
1004 violations thereof, by filing a civil action in any court of competent jurisdiction.

1005 SECTION 41. Section 30 of chapter 255D of the General Laws, as so appearing, is
1006 hereby repealed.

1007 SECTION 42. Chapter 255D of the General Laws, as so appearing, is hereby amended by
1008 adding after section 31 the following two sections:—

1009 Section 32. (a) Whenever the commissioner finds that any licensee or exempt person
1010 under section two of this chapter has violated any provision of this chapter or any rule or
1011 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
1012 of the business of a sales finance company, the commissioner may, by order, in addition to any
1013 other action authorized under this chapter or any rule or regulation made thereunder, impose a
1014 penalty upon the person which shall not exceed \$5,000 for each violation, up to a maximum of
1015 \$100,000 for the violation plus the costs of investigation. The commissioner may impose a
1016 penalty which shall not exceed \$5,000 for each violation of this chapter, or any rule or regulation
1017 adopted thereunder, by a person other than a licensee or exempt person under section two of this
1018 chapter, plus the costs of investigation.

1019 (b) In addition to any other action authorized under this chapter or any rule of regulation
1020 made thereunder, whoever violates any provision of this chapter may be punished by
1021 imprisonment for not more than 6 months. The penalty provision of this section shall be in
1022 addition to, and not in lieu of, any other provision of law applicable to a licensee or other person
1023 for violating section two or any rule or regulation made thereunder.

1024 (c) Nothing in this section shall limit the right of any individual or entity who has been
1025 injured as a result of any violation of this chapter by a licensee, or any person other than a

1026 licensee or exempt person under section two of this chapter, to bring an action to recover
1027 damages or restitution in a court of competent jurisdiction.

1028 (d) Any findings or order issued by the commissioner pursuant to this section shall be
1029 subject to review as provided in chapter thirty A.

1030 Section 33. (a) Whenever the commissioner determines that any person has, directly or
1031 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
1032 applicable to the conduct of the business of a sales finance company; or any order issued by the
1033 commissioner under this chapter or any written agreement entered between the licensee and the
1034 commissioner; the commissioner may serve upon the person a written notice of intention:

1035 (1) to prohibit the person from performing in the capacity of a principal employee on
1036 behalf of any licensee for a period of time that the commissioner deems necessary;

1037 (2) to prohibit the person from applying for or obtaining a license from the commissioner
1038 for a period up to 36 months following the effective date of an order issued under subsection (b)
1039 or (c); or

1040 (3) to prohibit the person from any further participation, in any manner, in the conduct of
1041 the affairs of a sales finance company in Massachusetts or to prohibit the person from being
1042 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
1043 business which requires a license from the commissioner.

1044 (b) A written notice issued under subsection (a) shall contain a written statement of the
1045 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
1046 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon

1047 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
1048 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
1049 by a duly authorized representative, the party shall be deemed to have consented to the issuance
1050 of an order of prohibition in accordance with the notice.

1051 (c) In the event of a consent under subsection (b), or if after a hearing the commissioner
1052 finds that any of the grounds specified in the notice have been established, the commissioner
1053 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
1054 appropriate.

1055 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
1056 person. The commissioner shall also serve a copy of the order upon the licensee of which the
1057 person is an employee or on whose behalf the person is performing. The order shall remain in
1058 effect and enforceable until it is modified, terminated, suspended, or set aside by the
1059 commissioner or a court of competent jurisdiction.

1060 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
1061 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
1062 part in the conduct of the affairs of a sales finance company in Massachusetts may not, while the
1063 order is in effect, continue or commence to perform in the capacity of a principal employee, or
1064 otherwise participate in any manner, if so prohibited by order of the commissioner, in the
1065 conduct of the affairs of:

1066 (1) any licensee under this chapter;

1067 (2) any other business which requires a license from the commissioner; and

1068 (3) any bank, as defined under section one of chapter one hundred sixty-seven, or any
1069 subsidiary thereof.

1070 SECTION 43. Section 8 of chapter 255E, as so appearing, is hereby amended by adding
1071 the following paragraph:—

1072 The commissioner, or the commissioner's examiners, or other assistants as the
1073 commissioner may designate, may summon the directors, officers or agents of a licensee, or any
1074 other witnesses, and examine them relative to the affairs, transactions and condition of the
1075 licensee, and, for that purpose, may administer oaths. Whoever, without justifiable cause, refuses
1076 to appear and testify when so required or obstructs the person making the examination in the
1077 performance of their duty, shall be punished by a fine of not more than \$1,000 or by
1078 imprisonment for not more than one year.