



June 26, 2024

The Honorable Ronald Mariano
Massachusetts State House
24 Beacon Street, Room 356
Boston, MA 02133

RE: Proposed Amendments to H. 4789 - An Act Relative to Strengthening Massachusetts' Economic Leadership

Dear Speaker Mariano:

On behalf of the Massachusetts Bankers Association's (MBA) more than 120 commercial, savings and cooperative banks and federal savings institution members with 72,000 employees located throughout the Commonwealth and New England, we are writing to express our views on several amendments to *H. 4789 - An Act Relative to Strengthening Massachusetts' Economic Leadership*

Our views on these amendments are detailed below:

Support Amendment #23: Crumbling Concrete Assistance Fund

Amendment #23, which was filed by Rep. Brian Ashe, seeks to establish a "Crumbling Concrete Assistance Fund" to provide financial assistance to owners of residential real property for the repair or replacement of concrete foundations of such property that have deteriorated due to the presence of pyrite or pyrrhotite. The fund would also attempt to minimize any negative economic impacts on municipalities in which such property is located and directs the Comptroller to transfer \$100,000,000 into fund for these activities.

MBA respectfully requests that you **support this amendment** during debate.

Support Amendment #78: Regulation of Money Transmission by the Division of Banks

Amendment #78 seeks to establish a regulatory structure for non-bank domestic money transmission in the Commonwealth. As you know, banks in Massachusetts are subject to regular federal and state examinations for compliance with consumer protection laws. While every state currently regulates foreign money transmission, including Massachusetts, the Commonwealth is the **only state that does not** license or regulate non-bank domestic money transmitters at the state level.

With the significant increase in fintech firms offering products that allow consumers to transmit funds as well as existing non-depository businesses providing these services, a state regulatory system would standardize consumer protections and ensure that the Division of Banks has the appropriate oversight authority over this rapidly changing industry.

MBA respectfully requests that you **support this amendment** during debate.



Support Amendments #105 & #106: Check Washing Enhanced Penalties & Commission

Amendments #105 & #106, filed by Rep. Jones, provide two distinct ways to attempt to address the growing problem of check washing in the Commonwealth. Check washing, which is a scam involving changing the payee names and often the dollar amounts on checks and fraudulently depositing them, is, unfortunately, on a meteoric rise causing angst and financial distress for residents throughout the state. Our members are also directly affected by these fraudulent schemes through added customer service resolution work, customer reassurance efforts, as well as additional compliance and due diligence that is required once the fraud is identified.

Amendment #105, which would create a new criminal penalty for those accused of participating in a check washing scheme, is strongly supported by MBA and its members. Additionally, MBA is also strongly supportive of Amendment #106, which would create a commission to study the issue of check washing and appreciates being named as sitting member of said commission if passed.

Finally, the Association would be remiss if it did not offer language that has been filed on MBA's behalf aimed at tacking the jurisdictional issues of check fraud. The language, which is currently filed as part of H 1419 & S 1117, seeks to facilitate the consolidation of check fraud that occurs in multiple court jurisdictions to a single jurisdiction to show the full scope of these scams. It is provided below for your consideration for inclusion in H. 4789, if deemed appropriate.

“SECTION XX. Section 30 of Chapter 266 of the General Laws, as so appearing, is further amended by adding to the end of paragraph (1) the following new sentence:– If the larceny involved monies received through the uttering of a forged, altered or counterfeit check, draft or order for the payment of money from any bank or other depository, action may be taken before either the court having jurisdiction where the uttering took place or where the payee bank or other depository's main office is located.

SECTION XX. Section 37 of said chapter 266 of the General Laws, as so appearing, is hereby amended by adding the following sentence to the end of said section:– Action taken under this jurisdiction where the crime was committed or where the main office of the bank or other depository are located.”

MBA respectfully asks that you **support these amendments** as well as our offered language during debate on H. 4789 this week.

Oppose Amendment #115: Improvements to Residential Properties – Residential PACE

MBA opposes Amendment #115, which would, effectively, authorize a local option to establish residential property assessed clean energy (R-PACE) programs throughout the Commonwealth.

According to a recent [proposed rule by the CFPB](#), R-PACE programs in other states have created a host of problems for homeowners – including exploitation of residents via scams, false promises about efficiency gains, and instances of “upselling” or justifying extraordinary costs for routine energy home improvement. Similar programs have also clouded title issues for borrowers due to the sequencing of priority liens in states where authorized. In addition to creating title issues when borrowers attempt to sell or refinance their mortgages, the PACE loan process in some states have far fewer consumer protections than the traditional mortgage process, which is overseen by both state and federal regulators.



The amendment, as written, appears to fail to consider important significant operational structure issues -- including critical provisions such as terms requiring the property owner to obtain written permission or consent whatsoever from any mortgage lender prior to securing a PACE loan; important consumer rights protections; and even ability to pay requirements.

Given these concerns we respectfully request you **oppose Amendment #115** for its potential detrimental effects to Massachusetts consumers and residential lending industry alike.

Support Amendment #352: Protect Consumers by Further Defining Subprime Loans

By way of background, following the Great Recession several federal and state laws and regulations were implemented to protect consumers, and particularly mortgage loan borrowers. Among these initiatives was [MGL. Chapter 184, Section 17B ½](#) specifically providing protections to First Time Home loan borrowers obtaining an adjustable-rate mortgage (ARM). The Division of Banks issued [Regulatory Bulletin 1.3-104](#) to implement this law.

However, Chapter 184, Section 17B ½ was passed *prior to* the Consumer Financial Protection Bureau (CFPB) finalizing its Ability-to-Repay (ATR) rule, which established that most new mortgages must comply with basic requirements that protect consumers from taking on loans they do not have the financial means to pay back. Lenders are presumed to have complied with the ATR rule if they issue “Qualified Mortgages” (QMs). These loans must meet certain requirements including prohibitions or limitations on the risky features that harmed consumers during the Great Recession. If a lender makes a QM, consumers have greater assurance that they can pay back the loan.

Under the 2012 Regulatory Bulletin, the mathematical calculation to determine if an ARM met the subprime threshold was: “the fully indexed rate is greater than three (3.0) percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.”

In 2022, market factors – specifically rapidly rising interest rates and an inverted yield curve - and not the loan product, caused many ARM loans on Massachusetts homes to suddenly be categorized as “subprime” under the 1.3-104 calculation. A consortium of representatives from the Cooperative Credit Union Association, the Massachusetts Bankers Association, and the Massachusetts Mortgage Bankers Association worked with the Division of Banks and provided initial documentation and language recommendations. The Division of Banks [revised the regulatory bulletin](#) on November 23rd, 2022, in response but legislative changes are also needed.

The revised bulletin made much needed changes to the subprime calculations, but there remain issues in this current rising interest rate environment. When using interest rates based upon when the interest rate has been set (Division) versus when the loan closes (CFPB), the time difference alone could put loans at risk for falling into a “subprime” classification. As an example, there could be 1-2 months between application date/interest rate set date and closing, and longer if the mortgage was for a new construction property. As was the case during 2022, loans could be clear of the subprime rate threshold at the time the rate is set but fall into it at any time up until the week of closing, and too late for a consumer to obtain in-person counseling in time.



Collectively the MBA, Cooperative Credit Union Association (CCUA) and Massachusetts Mortgage Bankers Association (MMBA) offered legislation (H.974) this session, which has been reported out favorably by the Joint Committee on Financial Services, to revise Chapter 184, Section 17B ½. Its language, which is found in Amendment #352, filed by Rep. Tackey Chan, includes the following changes:

- Clarifying that a first-time home loan that is a Qualified Mortgage is exempt from this section. The Commonwealth modified the Borrower Best Interest regulation (209 CMR 53.00) in 2014 to presume compliance if “the new home loan is a Qualified Mortgage” so there is already a precedence.

MBA strongly supports Amendment #352 and respectfully requests that **you support** this amendment during debate this week.

Support Amendment #473: Updating the Massachusetts Uniform Commercial Code

Massachusetts last adopted amendments to the UCC in 2021. However, those amendments included provisions approved in 2013 by the Uniform Law Commission. Since 2013, electronic contracting has become much more widespread, new technologies have been developed, and new types of assets have been created, including cryptocurrencies, non-fungible tokens, electronic payment instruments and other digital assets. Participants in commercial transactions have also pushed to allow electronic contracting for certain products that can only be documented on paper under the current provisions of the UCC. As a result of these developments, the American Law Institute and the Uniform Law Commission established a committee to provide for clear and market-appropriate rules relating to these new products and technologies that are before you as Amendment #473.

Massachusetts has long been a hub of technological innovation, finance and investment company and securities custody operations. It is important that Massachusetts enacts the bill in order to maintain its position as a world-leader in these sectors. It is for these reasons that MBA asks you to **support Amendment #473**.

Support Amendment #625: ETF Modernization

Amendment #625 would modernize Massachusetts law to align with recommended guidance from the National Association of Insurance Commissioners (NAIC) on how insurance companies treat fixed income exchange traded funds (ETFs) for accounting purposes. The House adopted identical legislation in 2022.

Over the past decade, fixed income ETFs emerged as a tool for insurance companies to diversify their portfolios and to better manage their risk. However, because Massachusetts does not align with NAIC’s guidance, an insurer using an ETF has to meet higher regulator capital levels (i.e. funds on hand) than it would if it directly owned the bonds that compose the ETF. The amendment changes the law, so ETFs and bonds are treated equally. Importantly, it does not create a mandate but instead an option for insurers.

Amendment #625 would improve business competitiveness in Massachusetts, both by opening up a channel for new business development and modernizing a business statute to meet current practices. New York State already adopted these changes, leaving Massachusetts businesses at a disadvantage compared to the NY counterparts. Importantly, there is no impact on the state’s budget.



MBA requests that you **support Amendment #625**.

Conclusion

Thank you for considering our views on these proposed amendments to *H. 4789 - An Act Relative to Strengthening Massachusetts' Economic Leadership*.

If you have any questions or need additional information, please contact us at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Papalardo', with a long horizontal flourish extending to the right.

Brad S. Papalardo, Esq.
Senior Vice President,
Chief of Government Affairs & Counsel