

## **BILL ANALYSIS**

C.S.H.B. 1307  
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Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Credit Union Department (“the department”) oversees 249 state-chartered credit unions that have assets totaling more than \$16.7 billion. The department is comprised of the Credit Union Commission (“the commission”), the commissioner, and the department’s staff. Section 15.103, Finance Code requires the department to perform a comprehensive study of the credit union statutes on a periodic basis.

Following the completion of such a study, the department met with representatives of the credit union industry to develop a bill to modernize the credit union statutes. This cooperative effort was intended to enable the credit union statutes to allow credit unions to provide financial services in a responsive, efficient manner and the department to ensure that credit unions operate in a safe and sound manner.

C.S.H.B. 1307 proposes the revisions to the credit union statutes recommended by the department and the credit union industry.

### **RULEMAKING AUTHORITY**

It is the committee’s opinion that rulemaking authority is expressly granted to the Credit Union Commission in SECTION 3 (Section 15.4032, Finance Code), SECTION 5 (Section 15.414, Finance Code), SECTION 13 (Section 122.014, Finance Code), SECTION 35 (Section 123.111, Finance Code), SECTION 36 (Section 123.211, Finance Code), and SECTION 45 (Section 126.002, Finance Code) of this bill.

### **ANALYSIS**

C.S.H.B. 1307 amends various sections of the Finance Code relating to the administration, operation, and regulation of credit unions.

#### **Regulatory Changes**

C.S.H.B. 1307 authorizes the credit union commissioner to issue, amend, or repeal interpretive statements on matters of general policy and opinions on specific matters affecting credit unions. An interpretive statement or opinion has the force of law and is a rule if the commission adopts it pursuant to the Administrative Procedures Act (Chapter 2001, Government Code). An interpretive statement or opinion may be relied upon by credit unions operating in this state and is entitled to great weight if it is reasonable and does not conflict with applicable law.

C.S.H.B. 1307 expressly allows the credit union commissioner to convene hearings regarding any matter under the commission’s jurisdiction. Matters considered confidential by law must be considered in a closed hearing. The bill expressly permits the commissioner to examine entities related to credit unions including a credit union service organization, a credit union management organization, and a third-party contractor providing member services for a credit union. The commissioner may collect a fee from these related entities to cover the cost of the examination.

The bill permits the department to accept gifts of money or property for any purpose authorized by statute. A gift must be used for the specific purpose identified by the grantor. The commission must approve acceptance and use of any gift. The bill expressly permits the commissioner to contract for professional or personal services to carry out the department's duties. The commission shall adopt rules for soliciting and awarding contracts.

C.S.H.B. 1307 establishes criteria that the commission shall consider when adopting rules, and it clarifies that the commission's rulemaking authority is neither enlarged nor diminished by the presence or absence of specific rulemaking authority in Chapter 15 or Subtitle D, Title 3, Finance Code. The bill clarifies the commission's authority to administer and enforce the laws under its jurisdiction and to establish reasonable and necessary fees for this administration.

The bill expands the list of reasons for which the commissioner may revoke or suspend the authority of a foreign credit union by adding operating in an unsafe or unsound condition and engaging in a pattern of unsafe or unsound practices. The bill clarifies that a foreign credit union cannot exercise powers or authorities available to it in its home jurisdiction that are not exercised by credit unions in Texas without the commissioner's approval. If the commissioner approves such a power or authority, then all credit unions would be authorized to use such a power or authority in this state. However, a Texas credit union would not have the field of membership powers of a foreign credit union operating in this state.

C.S.H.B. 1307 clarifies the commissioner's authority to accept credible evidence, other than through an examination, including reports of other regulators, auditors, and accountants. The bill permits the commissioner to issue a determination letter to a credit union that would outline the requirements a credit union must satisfy to avert further administrative action. Such a determination letter would be confidential, but the commissioner may release information regarding the existence of a final order if doing so would enhance effective enforcement of the order. The bill clarifies provisions related to the disclosure of confidential information, including disclosure to the commissioner, to an individual conducting discovery under subpoena or other legal process, and to credit union officials and employees. The bill confirms the authority of the commissioner to issue subpoenas.

The bill enables the commissioner to prohibit a person from participating any further in the affairs of any credit union in addition to removing the person from a credit union's office or terminating the person's employment at a credit union. The bill provides that a certificate from the commissioner indicating the failure to pay an administrative penalty is *prima facie* evidence of the imposition of the penalty and the department's compliance with the law. The attorney general is entitled under the bill to recover reasonable attorney's fees from the credit union or a designated person, or both, if the state prevails in a judicial action for collection of an administrative penalty.

The bill authorizes the commissioner to release limited information concerning a conservatorship order and related documents to the public and to determine and recoup conservatorship expenses. In such cases, the department has a lien against the credit union, and this lien has a higher priority than all other liens against the credit union. The bill clarifies the department's responsibilities when the National Credit Union Administration is the liquidating agent for a state credit union. The bill clarifies the requirement that all suits against a credit union under conservatorship be filed in Travis County. The bill provides procedures for withdrawals and issuance of credit when a credit union's members are considering a voluntary liquidation. A credit union in the process of a voluntary liquidation is still subject to laws governing credit unions.

#### Definitional Changes

C.S.H.B. 1307 redefines capital as "equity capital," which consists of retained earnings; appropriated retained earnings, including net worth and other reserves; undivided earnings; and other forms of capital in accordance with generally accepted accounting practices approved by the commissioner. The bill redefines reserves as "net worth reserves" and requires a credit union to contribute to net worth reserves to protect the interests of its members.

The bill provides new definitions for "membership share," "organization," "unsafe or unsound condition,"

and “unsafe or unsound practice.” It establishes that an “individual development account” is a type of deposit account. The bill also provides a definition of “secondary capital account” with respect to the powers of an underserved-area credit union.

The bill clarifies that confidential information provided to credit unions, organizations, or service providers of credit unions by the department remains the confidential property of the department and may not be disclosed except under certain circumstances. The bill clarifies what constitutes a quorum for purposes of a vote of a credit union’s members on voluntary liquidation.

#### Credit Union Operational Changes

C.S.H.B. 1307 clarifies several matters related to shares and permits a credit union to limit the number of membership shares that may be owned by a member, so long as the limitation applies to all members. Membership shares may not be pledged as security for any loan. The bill clarifies who may be admitted to membership and enhances a credit union’s ability to terminate or suspend a person’s membership, including for an act of physical or verbal abuse toward another member or employee.

C.S.H.B. 1307 permits a credit union to sell check and money transfer services for a fee to people within their field of membership. The bill permits a credit union to engage in any activity or action believed to be reasonably necessary to mitigate or avoid a loss as authorized by law or commission rule. The bill requires credit unions to submit call reports to the department more frequently, changing the interval to quarterly from semiannually. The bill clarifies procedures for serving claims against credit unions.

The commission by rule may authorize a credit union to issue certificates of indebtedness that are subordinate to all other claims of credit union creditors. The bill clarifies that a senior management employee may act as comaker, guarantor, or endorser of a loan or receive a loan or line of credit. A credit union is not permitted to contract out or delegate the management responsibilities for the credit union to an organization or individual who is not an officer, director, or employee of the credit union without the commissioner’s written approval.

The bill defines a credit union’s responsibilities related to a trust account with limited documentation, permits a credit union to accept and administer such a trust, and provides procedures for the payment of proceeds from such a trust on the death of the trustee or the last survivor of two or more trustees.

#### Credit Union Organizational Changes

C.S.H.B. 1307 adds a three-year business plan to the list of requirements for an application to incorporate a credit union. The bill permits the credit union commissioner to make approval of an application subject to any conditions. The bill permits the use of the abbreviation “CU” in lieu of the words “credit union” for the name of a credit union. The bill expressly requires credit unions to follow the laws of this state regarding interest rates, loan fees, and other applicable licensing and regulatory requirements.

The bill permits a credit union to apply for designation as an underserved-area credit union and indicates the minimum criteria for the commissioner to approve the application. Such credit unions may issue secondary capital accounts with the advance approval of the commissioner and may accept shares and deposits from nonmembers, powers not available to all credit unions. The bill allows the commission to adopt rules governing the organization and operation of underserved-area credit unions.

C.S.H.B. 1307 requires a credit union board to meet at least monthly. It permits a credit union board to authorize voting by an electronic means and to permit a director to participate in a board meeting by means of electronic communications. The bill specifies that an amendment of a credit union’s articles of incorporation or bylaws requires a two-thirds vote of the board. If an amendment is a standard bylaw previously adopted by the commission, then the commissioner would not be required to approve the amendment. A credit union board may also establish a minimum age requirement for a member to be able to vote.

The bill provides that the president or an employee of a credit union may serve as a director only as permitted by the credit union's bylaws, and only if the president and employees never constitute a majority of the board. A director's office becomes vacant if a director is absent from more meetings than permitted by commission rule. The bill clarifies that the board shall elect its officers annually at an organizational meeting, and the offices of secretary and treasurer may be held by the same person. A credit union board may also establish a minimum age requirement to hold office in the credit union. C.S.H.B. 1307 specifies that a board member holds office until a successor is elected or appointed.

#### **EFFECTIVE DATE**

September 1, 2003

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute adds language specifying that a credit union must follow the laws of this state regarding interest rates, loan fees, and other applicable licensing and regulatory requirements. The substitute deletes a provision of the original permitting a credit union to purchase the assets of another financial institution with the prior approval of the commissioner.

The substitute adds language requiring the commissioner's approval before a credit union may contract with a person who is not an officer, director, or employee of the credit union or with an organization that manages credit unions. The substitute clarifies the definition of "equity capital" from the original to specify that "other forms of capital" must be in accordance with generally accepted accounting principles.

The substitute adds language permitting a credit union to sell check and money transfer services for a fee to people within their field of membership. The substitute adds language specifying that the commission must use a gift for purposes specified by the grantor and must approve use of the gift.

The substitute makes numerous other technical and conforming changes.