

AN ACT

relating to the administration, operation, and regulation of credit unions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.402, Finance Code, is amended by amending Subsections (a) and (c) and adding Subsections (b-1) and (d) to read as follows:

(a) The commission may adopt reasonable rules necessary to administer [~~for administering~~] this chapter and to accomplish the purposes of Subtitle D, Title 3.

(b-1) In adopting rules under this section, the commission shall consider the need to:

(1) promote a stable credit union environment;

(2) provide credit union members with convenient, safe, and competitive services;

(3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and

(4) promote or encourage economic development in this state.

(c) The commission by rule shall establish [~~set~~] reasonable and necessary fees for the administration of this chapter and Subtitle D, Title 3 [~~, charges, and revenues required to be paid by a credit union~~].

1 (d) The presence or absence in this chapter or Subtitle D,
2 Title 3, of a specific reference to rules regarding a particular
3 subject does not enlarge or diminish the rulemaking authority
4 provided by this section.

5 SECTION 2. Section 15.403, Finance Code, is amended to read
6 as follows:

7 Sec. 15.403. SUPERVISION AND REGULATION OF CREDIT UNIONS.
8 ~~[(a) The commission and commissioner have the jurisdiction,~~
9 ~~powers, and duties formerly conferred by law on the banking~~
10 ~~commissioner of Texas in relation to managing, regulating, and~~
11 ~~supervising credit unions.~~

12 ~~[(b)]~~ The commissioner shall supervise and regulate a
13 credit union doing business in this state, other than a federal
14 credit union, in accordance with this chapter and Subtitle D, Title
15 3, including rules adopted under this chapter and Subtitle D, Title
16 3.

17 SECTION 3. Subchapter E, Chapter 15, Finance Code, is
18 amended by adding Sections 15.4031 and 15.4032 to read as follows:

19 Sec. 15.4031. CREDIT UNION COMMISSIONER HEARING. (a) The
20 commissioner may convene a hearing to receive evidence and argument
21 regarding any matter under this chapter or Subtitle D, Title 3,
22 before the commissioner for decision or review. The hearing must be
23 conducted under Chapter 2001, Government Code. A matter made
24 confidential by law must be considered by the commissioner in a
25 closed hearing.

26 (b) A hearing officer may conduct any hearing on behalf of
27 the commissioner.

1 Sec. 15.4032. EXAMINATION OF RELATED ENTITIES. (a) In
2 accordance with rules adopted by the commission, the commissioner
3 may examine, to the same extent as if the services or activities
4 were performed by a credit union on its own premises:

5 (1) a credit union service organization in which a
6 credit union has a material interest;

7 (2) an organization engaged primarily in the business
8 of managing one or more credit unions; and

9 (3) a third-party contractor providing electronic
10 data processing, electronic fund transfers, or other member
11 services on behalf of a credit union.

12 (b) The commissioner may collect a fee from an examined
13 contractor or organization in connection with each examination to
14 cover the cost of the examination or may collect that fee from the
15 credit unions that use the examined contractor.

16 SECTION 4. Section 15.404, Finance Code, is amended to read
17 as follows:

18 Sec. 15.404. ADMINISTRATION AND ENFORCEMENT OF STATUTES AND
19 RULES. The commissioner shall administer and enforce this chapter
20 and Subtitle D, Title 3, and rules adopted under this chapter and
21 Subtitle D, Title 3.

22 SECTION 5. Subchapter E, Chapter 15, Finance Code, is
23 amended by adding Sections 15.4041, 15.4042, 15.4043, 15.413, and
24 15.414 to read as follows:

25 Sec. 15.4041. ISSUANCE OF INTERPRETIVE STATEMENTS. (a)
26 The commissioner may issue interpretive statements containing
27 matters of general policy to guide the public and credit unions, and

1 may amend or repeal a published interpretive statement by issuing
2 an amended statement or notice of repeal of a statement.

3 (b) An interpretive statement may be disseminated by
4 newsletter, through an electronic medium such as the Internet, in a
5 volume of statutes or related materials published by the
6 commissioner or others, or by any other means reasonably calculated
7 to notify persons affected by the interpretive statement. Notice
8 of an amended or withdrawn statement must be disseminated in a
9 substantially similar manner as the affected statement was
10 originally disseminated.

11 Sec. 15.4042. ISSUANCE OF OPINION. (a) In response to a
12 specific request from a member of the public or the credit union
13 industry, the commissioner may issue an opinion directly or through
14 the deputy commissioner or a department attorney.

15 (b) If the commissioner determines that the opinion is
16 useful for the general guidance of the public or credit unions, the
17 commissioner may disseminate the opinion by newsletter, through an
18 electronic medium such as the Internet, in a volume of statutes or
19 related materials published by the commissioner or others, or by
20 any other means reasonably calculated to notify persons affected by
21 the opinion. A published opinion must be redacted to preserve the
22 confidentiality of the requesting party unless the requesting party
23 consents to be identified in the published opinion.

24 (c) The commissioner may amend or repeal a published opinion
25 by issuing an amended opinion or notice of repeal of an opinion and
26 disseminating the opinion or notice in a substantially similar
27 manner as the affected opinion was originally disseminated. The

1 requesting party may rely on the original opinion if:

2 (1) all material facts were originally disclosed to
3 the commissioner;

4 (2) the safety and soundness of the affected credit
5 union will not be endangered by further reliance on the original
6 opinion; and

7 (3) the text and interpretation of relevant governing
8 provisions of this chapter or Subtitle D, Title 3, have not been
9 changed by legislative or judicial action.

10 Sec. 15.4043. EFFECT OF INTERPRETIVE STATEMENT OR OPINION.
11 An interpretive statement or opinion issued under this subchapter
12 does not have the force of law and is not a rule for the purposes of
13 Chapter 2001, Government Code, unless adopted by the commission as
14 provided by Chapter 2001, Government Code. An interpretive
15 statement or opinion is an administrative construction of this
16 chapter or Subtitle D, Title 3, may be relied on by credit unions
17 authorized to engage in business in this state, and is entitled to
18 great weight if the construction is reasonable and does not
19 conflict with this chapter or Subtitle D, Title 3.

20 Sec. 15.413. GIFTS OF MONEY OR PROPERTY. The department may
21 accept money or property by gift, bequest, devise, or otherwise for
22 any department purpose authorized by this chapter and Subtitle D,
23 Title 3. A gift, bequest, or devise shall be used for the purposes
24 specified by the grantor. The commission must approve acceptance
25 and use of any gift, bequest, or devise under this section.

26 Sec. 15.414. AUTHORITY TO CONTRACT FOR PROFESSIONAL OR
27 PERSONAL SERVICES. For the purpose of carrying out the powers,

1 duties, and responsibilities of the department, the commissioner
2 may negotiate, contract, or enter into an agreement for
3 professional or personal services. The commission by rule shall
4 adopt policies and procedures consistent with applicable state
5 procurement practices for soliciting and awarding contracts under
6 this section.

7 SECTION 6. Section 121.002, Finance Code, is amended by
8 adding Subdivisions (9)-(12) to read as follows:

9 (9) "Membership share" means a designated share
10 account of a credit union consisting of the balance held by the
11 credit union and established by a credit union member in accordance
12 with the standards specified by the credit union.

13 (10) "Organization" means a corporation, partnership,
14 association, limited liability company, or other legal entity.

15 (11) "Unsafe or unsound condition," with respect to a
16 credit union, includes:

17 (A) being insolvent;

18 (B) having incurred or being likely to incur a
19 loss that will deplete all or substantially all of the credit
20 union's net worth; or

21 (C) being in imminent danger of losing the credit
22 union's share and deposit insurance or guarantee.

23 (12) "Unsafe or unsound practice" means an action or
24 inaction in the operation of a credit union that is contrary to
25 generally accepted standards of prudent operation, the likely
26 consequences of which, if continued, would be abnormal and material
27 risk of loss or danger to a credit union, the credit union's

1 members, or an organization insuring or guaranteeing the credit
2 union's shares and deposits.

3 SECTION 7. Section 121.006(a), Finance Code, is amended to
4 read as follows:

5 (a) If the commissioner [~~commission~~] proposes to [~~suspend~~
6 ~~or~~] revoke a credit union's certificate of incorporation, the
7 credit union is entitled to a hearing conducted by the State Office
8 of Administrative Hearings.

9 SECTION 8. Section 122.001(c), Finance Code, is amended to
10 read as follows:

11 (c) The application must contain:

12 (1) two copies of the articles of incorporation, which
13 must state:

14 (A) the name of the credit union;

15 (B) the municipality and county where the credit
16 union's principal place of business is to be located;

17 (C) that the credit union's term of existence is
18 perpetual;

19 (D) that the credit union's fiscal year is the
20 calendar year;

21 (E) the initial share accounts;

22 (F) the name and address of, and the number of
23 shares subscribed by, each incorporator;

24 (G) the number of directors constituting the
25 initial board and the name and address of each person who will serve
26 as director until the first annual meeting or until a successor is
27 elected and qualified; and

1 (H) the definable community of interest shared by
2 the members of the credit union at the time of incorporation; ~~and~~

3 (2) two copies of the standard bylaws for the general
4 operation of the credit union; and

5 (3) a business plan covering three years and providing
6 a detailed explanation of actions intended to accomplish the
7 primary functions of the credit union.

8 SECTION 9. Section 122.003(a), Finance Code, is amended to
9 read as follows:

10 (a) The name of a credit union must include the words
11 "credit union" or the abbreviation "CU" and an appropriate
12 descriptive word or words, or an acronym made up of initials of the
13 appropriate descriptive word or words and ending in "CU," approved
14 by the commissioner.

15 SECTION 10. Sections 122.006(a)-(c), Finance Code, are
16 amended to read as follows:

17 (a) The commissioner shall approve an application to
18 incorporate a credit union if the commissioner determines:

19 (1) that the incorporators have complied with this
20 chapter and rules adopted under this chapter; and

21 (2) ~~[the commissioner finds,]~~ from information
22 furnished with the application, the results of any investigation,
23 the evidence submitted at any hearing, and information in the
24 department's official records, that:

25 (A) the character and general fitness of the
26 incorporators and the members of the initial board warrant belief
27 that the credit union's business and affairs will be properly

1 administered in accordance with this subtitle and rules adopted
2 under this subtitle;

3 (B) the character and size of the field of
4 membership to be served by the credit union conform with this
5 subtitle and rules adopted under this subtitle and favor the credit
6 union's economic viability; and

7 (C) the incorporators and the members of the
8 initial board are acting in good faith and are making the
9 application in accordance with the purposes of this subtitle.

10 (b) In addition to the determinations made [~~findings~~] under
11 Subsection (a) and in accordance with commission rules, the
12 commissioner shall consider the effect of overlapping fields of
13 membership on the applicant credit union and existing state or
14 federal credit unions doing business in this state. The
15 commissioner may consider the availability and adequacy of
16 financial services in the local community and the effect that the
17 incorporation of the credit union would have on the local
18 community. As a condition of approval of the application, the
19 commissioner may require the applicant credit union to limit or
20 eliminate overlaps, in accordance with the rules, to achieve the
21 purposes of this subtitle and promote the welfare and stability of
22 those credit unions.

23 (c) The commissioner by written order shall state the
24 determinations [~~findings~~] required by Subsection (a) and approve or
25 deny the application. The commissioner may make approval of an
26 application conditional and shall include any conditions in the
27 order approving the application.

1 SECTION 11. Sections 122.011(a) and (b), Finance Code, are
2 amended to read as follows:

3 (a) The board may amend the articles of incorporation or
4 bylaws by a two-thirds vote of the directors present at a meeting at
5 which a quorum is present. The board [~~and~~] shall submit amendments
6 to the commissioner.

7 (b) Unless the amendment is a standard bylaw adopted by the
8 commission, the [~~The~~] commissioner in writing shall approve or
9 disapprove an amendment.

10 SECTION 12. Section 122.013, Finance Code, is amended by
11 amending Subsection (c) and adding Subsections (e) and (f) to read
12 as follows:

13 (c) The commissioner may suspend or revoke a foreign credit
14 union's authority to do business in this state if the commissioner
15 finds that the foreign credit union:

- 16 (1) has violated a rule adopted under this subtitle;
17 (2) is in an unsafe or unsound condition;
18 (3) is engaged in a pattern of unsafe or unsound
19 practices; or
20 (4) does not meet a commission requirement.

21 (e) A foreign credit union from a jurisdiction that allows a
22 credit union to exercise additional powers and authorities not
23 granted in this state may not exercise any of those powers or
24 authorities in this state until the foreign credit union requests
25 and obtains permission from the commissioner to exercise those
26 powers or authorities. If the commissioner determines that there
27 are no safety and soundness concerns, the commissioner shall

1 approve the request and shall publish the powers or authorities
2 granted in the manner authorized by Section 15.4041 or 15.4042 for
3 the issuance of an interpretive statement or an opinion. When
4 approved, those powers or authorities shall be available to all
5 credit unions authorized to engage in business under this subtitle.

6 (f) A foreign credit union may not use this section to alter
7 or negate the application to the credit union of any law of this
8 state regarding:

9 (1) permissible interest rates;

10 (2) loan fees; or

11 (3) licensing or regulatory requirements that relate
12 to insurance, securities, marketing or sales activities, or real
13 estate development and that are administered by an agency of this
14 state.

15 SECTION 13. Subchapter A, Chapter 122, Finance Code, is
16 amended by adding Section 122.014 to read as follows:

17 Sec. 122.014. UNDERSERVED-AREA CREDIT UNION. (a) In this
18 section, "secondary capital account" means a nontransactional
19 account in an amount greater than \$100,000 as established by the
20 commission that is:

21 (1) owned by a person other than an individual; and

22 (2) subordinated to other creditors.

23 (b) A credit union may apply to the commissioner for the
24 designation of the credit union as an underserved-area credit
25 union.

26 (c) The commissioner may designate a credit union as an
27 underserved-area credit union only if:

1 (1) at least 50 percent of a substantial and
2 well-defined segment of the credit union's members or potential
3 members who are at least 15 years of age earn not more than 80
4 percent of the state or national household median income, whichever
5 is higher;

6 (2) the credit union submits an acceptable written
7 strategic plan for marketing to and serving the segment described
8 by Subdivision (1); and

9 (3) the credit union submits other information and
10 satisfies other criteria as may reasonably be required by the
11 commissioner.

12 (d) In addition to the powers and authorities granted to
13 credit unions under this subtitle or otherwise, an underserved-area
14 credit union may:

15 (1) issue secondary capital accounts to members or
16 nonmembers of the credit union on the filing of an application with
17 and the advance approval of the commissioner; and

18 (2) accept shares and deposits from nonmembers.

19 (e) The commission may adopt rules for the organization and
20 operation of underserved-area credit unions, including rules
21 requiring disclosures to purchasers of secondary capital accounts
22 and other rules concerning those accounts.

23 SECTION 14. Section 122.051, Finance Code, is amended by
24 amending Subsection (d) and adding Subsections (e) and (f) to read
25 as follows:

26 (d) In this subsection, "good cause" includes the act of
27 physically or verbally abusing a credit union member or employee. A

1 person's membership in a credit union may be terminated or
2 suspended [~~member may be expelled~~] for good cause or for not
3 maintaining membership requirements, under the conditions and in
4 accordance with the procedures provided in [~~by~~] the bylaws. A
5 credit union may also discontinue providing any or all services to a
6 member for good cause without terminating or suspending the
7 person's membership. Termination or suspension of a person's
8 membership in the credit union or discontinuing services does not
9 relieve the person from any outstanding obligations owed to the
10 credit union.

11 (e) Two or more persons within the credit union's field of
12 membership who have jointly subscribed for one or more share or
13 deposit accounts under a joint account and who have complied with
14 all membership requirements may each be admitted to membership.

15 (f) A credit union authorized to engage in business under
16 this subtitle may accept as a member any other credit union
17 organized or chartered under the laws of this or another state or of
18 the United States. Those credit union members are not entitled to
19 any voting privileges.

20 SECTION 15. Section 122.052, Finance Code, is amended by
21 amending Subsections (c) and (d) and adding Subsection (e) to read
22 as follows:

23 (c) The board may authorize voting by mail or by electronic
24 means. Mail and electronic balloting shall be conducted in
25 accordance with commission rules.

26 (d) A member that is not an organization may not vote by
27 proxy. A member that is an organization may be represented by and

1 vote through a designated representative [~~one of its members or~~
2 ~~shareholders~~] who is authorized, in writing, by the organization's
3 governing body to represent the organization.

4 (e) The credit union's bylaws may establish a minimum age
5 requirement to vote.

6 SECTION 16. Section 122.053, Finance Code, is amended by
7 amending Subsections (b) and (c) and adding Subsections (e) and (f)
8 to read as follows:

9 (b) The membership of the credit union shall elect the board
10 at an annual membership meeting, from the membership, and in the
11 manner provided by the bylaws. A board member shall hold office
12 until a successor is qualified and elected or appointed.

13 (c) A director shall take and subscribe to an oath or
14 affirmation that the director:

15 (1) will diligently and honestly perform the
16 director's duties in administering the credit union's affairs;

17 (2) although the director may delegate the performance
18 of those duties, remains responsible for the performance of the
19 duties; ~~and~~

20 (3) will not knowingly violate or willingly permit the
21 violation of an applicable law; and

22 (4) will exercise the care and diligence reasonable
23 and necessary to administer the affairs of the credit union in a
24 safe and sound manner.

25 (e) The board shall meet at least once each month.

26 (f) If and to the extent provided in the bylaws, a director
27 may participate in and act at any meeting of the board by means of

1 electronic communications equipment through which all persons
2 participating in the meeting can communicate with each other.
3 Participation in a meeting in the manner authorized by this
4 subsection constitutes attendance at a meeting.

5 SECTION 17. Section 122.054, Finance Code, is amended to
6 read as follows:

7 Sec. 122.054. QUALIFICATION OF DIRECTORS. (a) The
8 commission by rule shall establish qualifications for a director.
9 The rules must provide that a person may not serve as director if
10 the person:

11 (1) has been convicted of a criminal offense involving
12 dishonesty or breach of trust;

13 (2) is not eligible for coverage under the blanket
14 bond required by Section 122.063 and rules adopted under this
15 subtitle; or

16 (3) has defaulted on payment of a voluntary obligation
17 to the credit union or has otherwise caused the credit union to
18 incur a financial loss.

19 (b) The president or an employee of a credit union may not
20 serve as director of the credit union unless permitted by the credit
21 union's bylaws. If the bylaws permit the president or an employee
22 to serve on the board, the bylaws must require that persons serve on
23 the board so that the president and employees of the credit union
24 never constitute a majority of the board.

25 SECTION 18. Section 122.055(a), Finance Code, is amended to
26 read as follows:

27 (a) The office of a director becomes vacant if the director

1 dies, resigns, is removed, has been absent from more meetings than
2 the total number of absences permitted by commission rule, or does
3 not possess or maintain the qualifications required to serve on the
4 board.

5 SECTION 19. Section 122.057, Finance Code, is amended by
6 amending Subsections (a) and (c) and adding Subsection (d) to read
7 as follows:

8 (a) At the annual organizational meeting, the [The] board
9 shall elect from its membership a chairman, vice chairman,
10 treasurer, and secretary. The offices of treasurer and secretary
11 may be held by the same individual.

12 (c) The board may appoint from its membership an executive
13 committee of at least three persons to exercise, between board
14 meetings, authority specifically delegated by the board under
15 conditions specified by the board. At each board meeting, the
16 executive committee shall report to the board regarding any meeting
17 held or action taken by the committee between board meetings.

18 (d) The bylaws may establish a minimum age requirement to
19 hold office in the credit union.

20 SECTION 20. Section 122.059, Finance Code, is amended to
21 read as follows:

22 Sec. 122.059. DELEGATION OF MANAGEMENT AND LOAN APPROVAL
23 AUTHORITY. (a) Without written approval of the commissioner, a
24 credit union may not:

25 (1) contract with an individual who is not an officer,
26 director, or employee of the credit union or with an organization
27 for the provision of the management of the credit union; or

1 (2) delegate to an individual who is not an officer,
2 director, or employee of the credit union or to an organization the
3 authority to manage the credit union.

4 (b) The board may delegate all or part of its power to
5 approve or disapprove a loan to a credit committee, one or more
6 other committees, or one or more individuals.

7 SECTION 21. Section 122.060, Finance Code, is amended by
8 amending Subsection (a) and adding Subsection (c) to read as
9 follows:

10 (a) The board chairman and the secretary:

11 (1) shall execute a certificate of election that
12 states the name and address of each officer, director, and
13 committee member elected or appointed; and

14 (2) not later than the 30th day after the date of the
15 annual organizational meeting of election or appointment of any
16 interim officer, director, or committee member, shall file a copy
17 of the certificate of election with the department.

18 (c) The commissioner may accept a form prescribed by an
19 insuring organization that contains substantially similar
20 information as the certificate of election in lieu of the
21 certificate. The acceptance of such a form does not limit the
22 commissioner's power to require additional information concerning
23 a newly elected or appointed officer, director, or committee
24 member.

25 SECTION 22. Section 122.101(a), Finance Code, is amended to
26 read as follows:

27 (a) A credit union shall submit to the department on a

1 quarterly [~~semiannual~~] basis a call report, on a form supplied by
2 the department, that states the credit union's financial condition.
3 The commissioner may require a credit union to file additional
4 financial [~~call~~] reports.

5 SECTION 23. Section 122.103, Finance Code, is amended to
6 read as follows:

7 Sec. 122.103. EQUITY CAPITAL. A credit union's equity
8 capital consists of:

9 (1) retained earnings [~~the aggregate amount of the~~
10 ~~share accounts of its members~~];

11 (2) appropriated retained earnings, including net
12 worth and other [~~all its~~] reserves; [~~and~~]

13 (3) [~~all its~~] undivided earnings; and

14 (4) other forms of capital in accordance with
15 generally accepted accounting principles and approved by the
16 commissioner.

17 SECTION 24. Section 122.104, Finance Code, is amended to
18 read as follows:

19 Sec. 122.104. NET WORTH RESERVE ALLOCATIONS. (a) The
20 commission by rule shall require a credit union to contribute to and
21 maintain net worth reserves necessary to protect the interests of
22 its members. The rule may:

23 (1) prescribe the purposes for which the net worth
24 reserves may be used; and

25 (2) authorize the commissioner to approve other uses.

26 (b) The credit union's board may establish reserves in
27 addition to the required net worth reserves.

1 SECTION 25. The heading to Section 122.105, Finance Code,
2 is amended to read as follows:

3 Sec. 122.105. MEMBERSHIP SHARE REDUCTION.

4 SECTION 26. Section 122.152(a), Finance Code, is amended to
5 read as follows:

6 (a) After agreement by the directors and approval by the
7 members, if applicable, of each credit union or federal credit
8 union, the chairman [~~president~~] and secretary of each credit union
9 or federal credit union shall execute a certificate of merger or
10 consolidation that:

11 (1) includes a copy of the resolution or other action
12 by which the board agreed to the merger or consolidation plan; and

13 (2) states:

14 (A) the time and place of the board meeting at
15 which the board agreed to the merger or consolidation plan;

16 (B) the board's vote for and against adoption of
17 the plan;

18 (C) the time and place of the meeting at which the
19 members approved the plan, if applicable;

20 (D) the membership's vote for and against
21 approval of the plan, if applicable; and

22 (E) the name of the surviving credit union.

23 SECTION 27. The heading to Section 122.255, Finance Code,
24 is amended to read as follows:

25 Sec. 122.255. DETERMINATION OF MISCONDUCT [~~BY~~
26 ~~COMMISSIONER~~].

27 SECTION 28. Section 122.256, Finance Code, is amended to

1 read as follows:

2 Sec. 122.256. DETERMINATION [~~DEMAND~~] LETTER; BOARD
3 MEETING. (a) If the commissioner determines from examination or
4 other credible evidence that a credit union is in a condition that
5 may warrant the issuance of an order under this chapter or Chapter
6 126 [~~makes a finding listed in Section 122.255~~], the commissioner
7 may notify [~~shall issue a demand letter giving written notice to~~]
8 the credit union in writing of the commissioner's determination,
9 the requirements the credit union must satisfy to abate the
10 determination, and the time by which the requirements must be
11 satisfied to avert further administrative action. The
12 determination letter must be delivered in person or sent by
13 registered or certified mail, return receipt requested [~~and each~~
14 ~~offending person and stating each violation or practice found~~].

15 (b) If considered necessary, the [~~The~~] commissioner may
16 [~~promptly shall~~] call a meeting of the credit union's board. The
17 directors shall attend the meeting. The commissioner shall present
18 to the board the findings stated in the determination [~~demand~~]
19 letter and shall demand the discontinuance of any violation or
20 unsafe or unsound practice found.

21 SECTION 29. Section 122.257(a), Finance Code, is amended to
22 read as follows:

23 (a) If the commissioner makes a finding listed in Section
24 122.255 and determines that an order to cease and desist is
25 necessary and in the best interest of the credit union involved and
26 its depositors, creditors, and members, the commissioner may serve
27 on the credit union, its board, and each offending person an order

1 to cease and desist from a violation or practice specified in the
2 order and to take affirmative action that the commissioner
3 considers necessary to correct a condition resulting from a
4 violation or unsafe or unsound practice found.

5 SECTION 30. Sections 122.258(a) and (c), Finance Code, are
6 amended to read as follows:

7 (a) The commissioner by order may remove or prohibit a
8 person who is a current or former officer, director, manager, or
9 employee of a credit union from office, ~~[or]~~ employment, or further
10 participation in the affairs of a credit union if the commissioner
11 by examination or other credible evidence:

12 (1) finds that:

13 (A) the person has continued a violation or
14 practice previously charged and found by the commissioner after
15 issuance of a determination letter ~~[notice and demand]~~ under
16 Section 122.256 or a cease and desist order under Section 122.257;
17 and

18 (B) removal or prohibition is necessary and in
19 the best interest of the credit union and its depositors,
20 creditors, and members; or

21 (2) makes a finding listed in Section 122.255 and
22 determines that removal or prohibition of the person is immediately
23 necessary because the person has committed or is about to commit:

24 (A) a fraudulent or criminal act involving the
25 conduct of the business of the credit union;

26 (B) an act that may cause the credit union to
27 become insolvent or to be placed in imminent danger of insolvency;

1 or

2 (C) an act that otherwise threatens immediate and
3 irreparable harm to the public or the credit union or its members,
4 depositors, or creditors.

5 (c) On issuance of the order, the person has no right, duty,
6 or authority of office or employment in the credit union. After the
7 order becomes final, the person removed or prohibited may not hold
8 office in, be employed by, or participate in the affairs of any
9 ~~[the]~~ credit union without the prior written approval of the
10 commissioner. The order is final as of the date of issuance unless
11 the person removed or prohibited or the credit union, as evidenced
12 by a certified copy of the board resolution, files written notice of
13 appeal with the commissioner not later than the 10th day after the
14 day the removal order is served.

15 SECTION 31. Section 122.260, Finance Code, is amended by
16 amending Subsection (c) and adding Subsection (d) to read as
17 follows:

18 (c) The commissioner may bring suit for injunction or to
19 collect the administrative penalty in a district court of Travis
20 County. In the suit, a certificate by the commissioner showing a
21 failure to pay an administrative penalty is prima facie evidence
22 of:

23 (1) the imposition of the penalty or the delinquency
24 of the stated penalty amount; and

25 (2) compliance by the department with the law relating
26 to the computation and imposition of the penalty.

27 (d) The attorney general is entitled to recover reasonable

1 attorney's fees from the credit union or the designated person, or
2 both, if the attorney general prevails in a judicial action
3 necessary for collection of the administrative penalty.

4 SECTION 32. Section 122.261, Finance Code, is amended by
5 amending Subsection (a) and adding Subsection (c) to read as
6 follows:

7 (a) A determination letter, a cease and desist order, a
8 removal order, ~~and~~ each copy of a notice or ~~7~~ correspondence,
9 and all ~~or~~ other documents or records ~~record~~ relating to an
10 order or determination letter issued under this subchapter
11 ~~[concerning a violation or unsound practice]~~ are confidential and
12 are not subject to public disclosure except in an action authorized
13 by this subtitle or other authority.

14 (c) The commissioner may release information regarding the
15 existence of a final order to the public if the commissioner
16 concludes that the release would enhance effective enforcement of
17 the order.

18 SECTION 33. Section 123.003, Finance Code, is amended to
19 read as follows:

20 Sec. 123.003. ENLARGEMENT OF POWERS. (a) A credit union
21 may engage in any activity in which it could engage, exercise any
22 power it could exercise, or make any loan or investment it could
23 make, if it were operating as a federal credit union.

24 (b) Notwithstanding any other law, and in addition to the
25 powers and authorities conferred under Subsection (a), a credit
26 union has the powers or authorities of a foreign credit union
27 operating a branch in this state if the commissioner finds that

1 exercise of those powers or authorities is convenient for and
2 affords an advantage to the credit union's members and maintains
3 the fairness of competition and parity between the credit union and
4 any foreign credit union. A credit union does not have the field of
5 membership powers or authorities of a foreign credit union
6 operating a branch in this state.

7 SECTION 34. Section 123.106, Finance Code, is amended to
8 read as follows:

9 Sec. 123.106. CHANGE OF LOCATION. A [~~On written notice to~~
10 ~~the commissioner, a~~] credit union may change its principal place of
11 business or a subsidiary place of business to another location by
12 notifying the commissioner in writing of the new address and the
13 effective date of the change [in this state].

14 SECTION 35. Subchapter B, Chapter 123, Finance Code, is
15 amended by adding Section 123.111 to read as follows:

16 Sec. 123.111. RIGHT TO ACT TO MITIGATE OR AVOID LOSS. This
17 subtitle does not prohibit a credit union from investing its money,
18 operating a business, managing or dealing in property, or taking
19 any other action at any time that is reasonably necessary to avoid
20 or mitigate a loss on a loan or on an investment made or obligation
21 created in good faith and in the usual course of the credit union's
22 business, as authorized by this subtitle or a rule adopted by the
23 commission.

24 SECTION 36. Subchapter C, Chapter 123, Finance Code, is
25 amended by adding Section 123.211 to read as follows:

26 Sec. 123.211. CERTIFICATES OF INDEBTEDNESS. The commission
27 by rule may authorize a credit union to issue certificates of

1 indebtedness that are subordinated to all other claims of credit
2 union creditors.

3 SECTION 37. Subchapter C, Chapter 123, Finance Code, is
4 amended by adding Section 123.212 to read as follows:

5 Sec. 123.212. CHECK AND MONEY TRANSFER SERVICES. A credit
6 union may sell to a person within its field of membership negotiable
7 checks, money orders, and other similar money transfer instruments
8 or services and may also cash checks and money orders for a person
9 within its field of membership for a fee.

10 SECTION 38. Section 124.201, Finance Code, is amended to
11 read as follows:

12 Sec. 124.201. AUTHORIZATION. Only if done in accordance
13 with limitations imposed by [~~Subject to~~] Section 124.202, a credit
14 union may make a loan or extend a line of credit to:

15 (1) a director, senior management employee, or member
16 of the credit committee; or

17 (2) the immediate family of the director, senior
18 management employee, or member of the credit committee.

19 SECTION 39. Section 124.203, Finance Code, is amended to
20 read as follows:

21 Sec. 124.203. AUTHORIZATION TO ACT AS COMAKER, GUARANTOR,
22 OR ENDORSER. A [~~Subject to Section 124.204, a~~] credit union may
23 permit a director, senior management employee, or member of the
24 credit committee to act as comaker, guarantor, or endorser of a loan
25 to a member only in accordance with limitations imposed by Section
26 124.204.

27 SECTION 40. Section 124.204, Finance Code, is amended to

1 read as follows:

2 Sec. 124.204. PRIOR APPROVAL REQUIRED. The board must give
3 its approval before the credit union permits a director, senior
4 management employee, or member of the credit committee to act as
5 comaker, guarantor, or endorser of a loan to a member if the amount
6 of the loan or aggregate of outstanding loans to the comaker,
7 guarantor, or endorser is greater than the sum of:

8 (1) \$10,000 or a higher amount established by
9 commission rule; and

10 (2) the amount of the shares and deposits pledged for
11 the loan.

12 SECTION 41. Section 125.002, Finance Code, is amended to
13 read as follows:

14 Sec. 125.002. SHARE ACCOUNT. (a) Shares and membership
15 shares shall be subscribed to and paid for in the manner prescribed
16 by the bylaws. A credit union may limit the number of shares that
17 may be owned by a member, but any such limitation must be applied
18 equally to all members.

19 (b) A credit union may require credit union members to
20 subscribe to and make [A share account consists of] payments on [a
21 member's shares, including] membership shares. Membership shares
22 may not be pledged as security on any loan.

23 (c) The board of directors may establish [The shares may be:
24 [(-1) of] different [types or] classes of share
25 accounts classified in relation to different rights, restrictions,
26 [, and

27 [(-2) with or without] par value, and dividend rates.

1 (d) A joint account may hold more than one membership share,
2 supporting membership for more than one member of the credit union
3 [as determined by the board].

4 SECTION 42. Section 125.003, Finance Code, is amended to
5 read as follows:

6 Sec. 125.003. DEPOSIT ACCOUNT. A deposit account consists
7 of payments made under an agreement between the credit union and a
8 depositor, including a draft account, checking account, savings
9 account, certificate of deposit, individual development account,
10 or other similar account or arrangement.

11 SECTION 43. Subchapter D, Chapter 125, Finance Code, is
12 amended by adding Section 125.309 to read as follows:

13 Sec. 125.309. TRUST ACCOUNT WITH LIMITED DOCUMENTATION.

14 (a) For a trust account that is purported to be opened under a
15 written trust agreement, the trustee may provide the credit union
16 with a certificate of trust to evidence the trust relationship. The
17 certificate must be an affidavit of the trustee and must include:

18 (1) the effective date of the trust;

19 (2) the name of the trustee;

20 (3) the name of or method for choosing a successor
21 trustee;

22 (4) the name and address of each beneficiary;

23 (5) the authority granted to the trustee;

24 (6) the information needed for disposition of the
25 trust account on the death of the trustee or the last survivor of
26 two or more trustees;

27 (7) an indemnification of the credit union; and

1 (8) any other information required by the credit
2 union.

3 (b) The credit union may accept and administer the trust
4 account, in accordance with the certificate of trust, without
5 requiring a copy of the trust agreement. The credit union is not
6 liable for administering the account as provided by the certificate
7 of trust, unless the credit union has actual knowledge that the
8 certificate of trust is contrary to the terms of the trust
9 agreement.

10 (c) On the death of the trustee or the last survivor of two
11 or more trustees and notwithstanding Section 125.308, the credit
12 union may pay all or part of the proceeds of the trust account as
13 provided by the certificate of trust. If the trustee did not
14 provide a certificate of trust, the credit union's right to treat
15 the account as owned by a trustee ceases on the death of the
16 trustee. On the death of the trustee or the last survivor of two or
17 more trustees, the credit union, unless the certificate of trust
18 provides otherwise, shall pay the proceeds of the account in equal
19 shares to each person who survives the trustee, is named as a
20 beneficiary in the certificate of trust, and can be located by the
21 credit union from the credit union's records. If there is no
22 certificate of trust, payment of the proceeds of an account shall be
23 made as provided by Section 125.308. Payment made under this
24 section for all or part of the proceeds of an account discharges any
25 liability of the credit union to the extent of the payment. The
26 credit union may pay all or part of the proceeds of an account in the
27 manner provided by this section, regardless of whether it has

1 knowledge of a competing claim, unless the credit union receives
2 actual knowledge that payment has been restrained by court order.

3 (d) This section does not require a credit union to accept
4 an account from a trustee or to search for the location of a named
5 beneficiary that is not named in its records.

6 (e) This section does not affect a contractual provision to
7 the contrary that otherwise complies with the laws of this state.

8 (f) For purposes of this section, "actual knowledge" is
9 presumed if a credit union possesses a copy of a trust agreement
10 that is certified as to authenticity by a settlor, trustee,
11 beneficiary, or an attorney for the settlor, trustee, or
12 beneficiary.

13 SECTION 44. Section 125.401, Finance Code, is amended to
14 read as follows:

15 Sec. 125.401. THIRD-PARTY CLAIM. (a) In this section:

16 (1) "Credit union" includes:

17 (A) a credit union organized under the laws of
18 this state;

19 (B) a foreign credit union; and

20 (C) a federal credit union.

21 (2) "Out-of-state credit union" means a credit union
22 that:

23 (A) is not organized under the laws of this
24 state; and

25 (B) has its main or principal office in another
26 state or country.

27 (3) "Texas credit union" means a credit union that:

1 (A) is organized under the laws of this state or
2 federal law; and

3 (B) has its main or principal office in this
4 state.

5 (b) A credit union [~~or federal credit union~~] doing business
6 in this state must be served with citation or other appropriate
7 process issued from a court in connection with a suit instituted by
8 a third party to recover or establish an interest in a deposit or
9 share account before the credit union [~~or federal credit union~~] is
10 required to:

11 (1) recognize the third party's claim;

12 (2) withhold payment of the account to any party to the
13 account; or

14 (3) withhold payment to the order of any party to the
15 account.

16 (c) A claim against a depositor, joint account owner, or
17 member of a credit union shall be delivered or otherwise served as
18 required or permitted by law at the address of the registered agent
19 of the credit union as designated in a registration filed under
20 Section 201.102 or 201.103, as applicable.

21 (d) A claim against a depositor, joint account owner, or
22 member of an out-of-state credit union that files a registration
23 statement under Section 201.102 or a Texas credit union that files a
24 registration statement under Section 201.103 is not effective with
25 respect to the credit union if the claim is served or delivered to
26 an address other than the address of the credit union's registered
27 agent as provided in the registration.

1 (e) To prevent or limit a credit union's compliance with or
2 response to a claim subject to this section, the depositor, joint
3 account owner, or member must seek an appropriate remedy, including
4 a restraining order, injunction, or protective order, to prevent or
5 suspend the credit union's response to a claim against the
6 depositor, joint account owner, or member.

7 (f) A credit union that does not register with the secretary
8 of state under Section 201.102 or 201.103 is subject to service or
9 delivery of all claims against depositors, joint account owners, or
10 members of the credit union or against the credit union itself by
11 serving the president or vice president of the credit union or as
12 otherwise provided by law.

13 SECTION 45. Section 126.002, Finance Code, is amended by
14 amending Subsections (a) and (b) and adding Subsections (e) and (f)
15 to read as follows:

16 (a) Except as provided by Subsections (b) and (c),
17 information obtained directly or indirectly by the department in
18 any manner, including by application or examination, concerning
19 [that relates to] the financial condition or business affairs of a
20 credit union and the files and records of the department relating to
21 that information, except a statement intended for publication, are
22 confidential.

23 (b) Confidential information may not be disclosed to a
24 member of the commission, and a member of the commission may not be
25 given access to the files or records of the department, except that
26 the [The] commissioner may disclose to the commission information,
27 files, and records pertinent to a hearing or matter pending before

1 the commission or the commissioner.

2 (e) Confidential information that is provided by the
3 department to a credit union, organization, or service provider of
4 a credit union, whether in the form of a report of examination or
5 otherwise, is the confidential property of the department. The
6 recipient or an officer, director, employee, or agent of the
7 recipient may not make the information public and may not disclose
8 the information to a person not officially connected to the
9 recipient as an officer, director, employee, attorney, auditor, or
10 independent auditor, except as authorized by rules adopted under
11 this subtitle.

12 (f) Discovery of confidential information from a person
13 subject to this subtitle or Chapter 15 under subpoena or other legal
14 process must comply with rules adopted under this subtitle, Chapter
15 15, and any other applicable law. The rules may:

16 (1) restrict release of confidential information to
17 the portion directly relevant to the legal dispute at issue; and

18 (2) require that a protective order, in a form and
19 under circumstances specified by the rules, be issued by a court
20 before release of the confidential information.

21 SECTION 46. Section 126.051, Finance Code, is amended to
22 read as follows:

23 Sec. 126.051. EXAMINATIONS. (a) The department, through
24 examiners it appoints and in accordance with commission rules,
25 shall periodically examine the books and records of each credit
26 union.

27 (b) In lieu of an examination under this section, the

1 commissioner may accept:

2 (1) the examination report of a regulator authorized
3 to examine a credit union, foreign credit union, federal credit
4 union, or other financial institution; or

5 (2) the audit report of an accountant, satisfactory to
6 the commissioner, who has made and submitted a report of the
7 condition of the affairs of a credit union, foreign credit union,
8 federal credit union, or other financial institution.

9 (c) The commissioner may accept all or part of a report in
10 lieu of all or part of an examination. An accepted part of the
11 report has the same validity as an examination under this section.

12 SECTION 47. Section 126.053, Finance Code, is amended to
13 read as follows:

14 Sec. 126.053. WITNESSES; PRODUCTION OF DOCUMENTS. (a) In
15 an examination conducted under this subchapter, the commissioner or
16 the commissioner's designee [an examiner] may:

17 (1) subpoena [summon] witnesses;

18 (2) administer an oath or affirmation to a person,
19 including any [an] officer, director, agent, or employee of a
20 credit union, and examine the person under oath or affirmation on
21 any subject the commissioner considers pertinent to the financial
22 condition or the safety and soundness of the activities of a credit
23 union; or

24 (3) require and compel by subpoena [court order] the
25 production of documents that are not voluntarily produced,
26 including books, papers, securities, and records.

27 (b) The commissioner may apply to a district court in Travis

1 County for an order requiring a person to obey a subpoena, to
2 appear, or to answer questions in connection with the examination
3 or investigation.

4 (c) The court shall issue an order under Subsection (b) if
5 the court finds good cause to issue the subpoena or to take
6 testimony.

7 SECTION 48. Section 126.108, Finance Code, is amended to
8 read as follows:

9 Sec. 126.108. CONFIDENTIALITY; DISCLOSURE. A
10 conservatorship order and a copy of a notice, ~~or~~ correspondence,
11 transcript, pleading, or other document relating to the order are
12 ~~is~~ confidential and may be disclosed only in a related legal
13 proceeding or as otherwise authorized by law. The commissioner may
14 release to the public information regarding the existence of an
15 order if the commissioner concludes that release of the information
16 would enhance effective enforcement of the order.

17 SECTION 49. Section 126.159, Finance Code, is amended to
18 read as follows:

19 Sec. 126.159. COST OF CONSERVATORSHIP. (a) The
20 commissioner shall determine and approve any reasonable expenses
21 attributable to the service of a conservator, including costs
22 incurred by the department and the compensation and expenses of the
23 conservator and any professional employees appointed to represent
24 or assist the conservator. The commissioner or an employee of the
25 department may not receive compensation in addition to salary for
26 servicing as conservator, but the department may receive
27 reimbursement for the fully allocated personnel cost associated

1 with the service of the commissioner or the employee as conservator
2 [the cost of the conservatorship].

3 (b) All approved expenses [~~The cost of conservatorship~~]
4 shall be paid by [~~from~~] the credit union [~~union's assets as the~~
5 ~~commissioner directs~~]. The department has a lien against the
6 assets and money of the credit union to secure payment of approved
7 expenses. The lien has a higher priority than any other lien
8 against the credit union.

9 (c) Notwithstanding this subchapter, the credit union may
10 retain attorneys and hire other persons to assist the credit union
11 in contesting or satisfying the requirements of an order of
12 conservatorship. The commissioner shall authorize the payment of
13 reasonable fees and expenses for the attorneys and other persons as
14 expenses of the conservatorship.

15 (d) The commissioner may waive or defer collection of
16 assessment or examination fees by the department from the credit
17 union during a period of conservatorship if the waiver or deferral
18 would appear to benefit the prospects for rehabilitation. As a
19 condition of release from conservatorship, the commissioner may
20 require the rehabilitated credit union to pay or develop a
21 reasonable plan for payment of any deferred fees.

22 SECTION 50. Section 126.160(a), Finance Code, is amended to
23 read as follows:

24 (a) A suit filed against a credit union [~~or its conservator~~]
25 while the credit union is under [~~a~~] conservatorship, or against a
26 person in connection with an action taken or decision made by that
27 person as a conservator of a credit union, [~~order is in effect~~] must

1 be brought in Travis County regardless of whether the credit union
2 remains under conservatorship.

3 SECTION 51. Subchapter E, Chapter 126, Finance Code, is
4 amended by adding Section 126.206 to read as follows:

5 Sec. 126.206. NATIONAL CREDIT UNION ADMINISTRATION AS
6 LIQUIDATING AGENT. (a) The commissioner may tender a credit union
7 that has been closed for liquidation to the National Credit Union
8 Administration or its successor as liquidating agent if the shares
9 and deposits of the credit union were insured by the National Credit
10 Union Share Insurance Fund or its successor on the date of closing.

11 (b) After acceptance of tender of the credit union, the
12 National Credit Union Administration or its successor, as
13 liquidating agent of the credit union, shall perform the acts and
14 duties that it considers necessary or desirable and that are
15 permitted or required by federal law or this chapter. The National
16 Credit Union Administration, as liquidating agent, is not subject
17 to commission control.

18 (c) If the National Credit Union Share Insurance Fund pays
19 the insured share and deposit liabilities of a credit union that is
20 being liquidated under this subchapter, the National Credit Union
21 Administration is subrogated, to the extent of the payment, to all
22 rights that the owners of the share or deposit accounts have against
23 the credit union.

24 SECTION 52. Section 126.454, Finance Code, is amended to
25 read as follows:

26 Sec. 126.454. CREDIT UNION OPERATIONS BEFORE AND AFTER
27 VOTE. Immediately after notice under Section 126.453 is mailed,

1 the commissioner may restrict control or give direction with
2 respect to the continued business of the credit union pending
3 consideration of voluntary liquidation by the members. During that
4 period, no member shall withdraw an aggregate amount in excess of
5 the share insurance covered by [~~shall cease to operate except to~~
6 ~~accept loan payments or other obligations due~~] the credit union. No
7 new extensions of credit shall be funded during the period between
8 the board of directors' adoption of the resolution recommending
9 voluntary liquidation and the membership meeting called to consider
10 voluntary liquidation, except for the issuance of loans fully
11 secured by a pledge of shares and the funding of outstanding loan
12 commitments approved before adoption of the resolution. If the vote
13 to dissolve and liquidate the credit union is affirmative, the
14 credit union may conduct only business incidental to liquidation.

15 SECTION 53. Section 126.455, Finance Code, is amended to
16 read as follows:

17 Sec. 126.455. VOTE ON VOLUNTARY LIQUIDATION. At a special
18 meeting called to consider the proposed liquidation, a majority of
19 the credit union members, but not less than a quorum, may vote to
20 dissolve and liquidate the credit union. Those members casting
21 votes by mail or at the meeting constitute a quorum for the
22 transaction of business at the special meeting, notwithstanding a
23 bylaw provision to the contrary.

24 SECTION 54. Section 126.457, Finance Code, is amended to
25 read as follows:

26 Sec. 126.457. APPOINTMENT OF LIQUIDATING AGENT. (a) If the
27 members approve the liquidation, the board shall appoint a

1 liquidating agent to:

- 2 (1) conserve and collect the credit union's assets;
- 3 (2) wind up the credit union's affairs;
- 4 (3) discharge the credit union's debts;
- 5 (4) distribute the credit union's assets; and
- 6 (5) take any other action necessary and incidental to
- 7 liquidating the credit union.

8 (b) The National Credit Union Administration or other
9 insuring organization has the right of first refusal to be
10 appointed as liquidating agent of any credit union that it insures.

11 SECTION 55. Subchapter J, Chapter 126, Finance Code, is
12 amended by adding Section 126.458 to read as follows:

13 Sec. 126.458. APPLICATION OF LAW TO CREDIT UNION IN
14 VOLUNTARY LIQUIDATION. A credit union in the process of voluntary
15 dissolution and liquidation remains subject to this subtitle and
16 Chapter 15, including provisions for examination by the
17 commissioner, and the credit union shall furnish reports as
18 required by the commissioner.

19 SECTION 56. (a) This Act takes effect September 1, 2003.

20 (b) The change in law made by this Act by the amendment of
21 Section 125.401, Finance Code, applies only to a claim that arises
22 on or after the effective date of this Act. A claim that arose
23 before the effective date of this Act is governed by the law as it
24 existed immediately before that date, and the former law is
25 continued in effect for that purpose.

President of the Senate

Speaker of the House

I certify that H.B. No. 1307 was passed by the House on April 14, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1307 on May 22, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1307 was passed by the Senate, with amendments, on May 20, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor