

By: Marchant

H.B. No. 1307

A BILL TO BE ENTITLED

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 Subsection (a) 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.

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

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

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

8 [(b)] The commissioner shall supervise and regulate a
9 credit union doing business in this state, other than a federal
10 credit union, in accordance with this chapter and Subtitle D, Title
11 3, including rules adopted under this chapter and Subtitle D, Title
12 3.

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

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

22 (b) A hearing officer may conduct any hearing on behalf of
23 the commissioner.

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

1 (1) a credit union service organization in which a
2 credit union has an interest;

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

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

8 (b) The commissioner may collect a fee from an examined
9 contractor or organization in connection with each examination to
10 cover the cost of the examination or may collect that fee from the
11 credit unions that use the examined contractor.

12 SECTION 4. Section 15.404, Finance Code, is amended to read
13 as follows:

14 Sec. 15.404. ADMINISTRATION AND ENFORCEMENT OF STATUTES AND
15 RULES. The commissioner shall administer and enforce this chapter
16 and Subtitle D, Title 3, and rules adopted under this chapter and
17 Subtitle D, Title 3.

18 SECTION 5. Subchapter E, Chapter 15, Finance Code, is
19 amended by adding Sections 15.4041, 15.4042, 15.4043, 15.413, and
20 15.414 to read as follows:

21 Sec. 15.4041. ISSUANCE OF INTERPRETIVE STATEMENTS. (a)
22 The commissioner may issue interpretive statements containing
23 matters of general policy to guide the public and credit unions, and
24 may amend or repeal a published interpretive statement by issuing
25 an amended statement or notice of repeal of a statement.

26 (b) An interpretive statement may be disseminated by
27 newsletter, through an electronic medium such as the Internet, in a

1 volume of statutes or related materials published by the
2 commissioner or others, or by any other means reasonably calculated
3 to notify persons affected by the interpretive statement. Notice
4 of an amended or withdrawn statement must be disseminated in a
5 substantially similar manner as the affected statement was
6 originally disseminated.

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

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

20 (c) The commissioner may amend or repeal a published opinion
21 by issuing an amended opinion or notice of repeal of an opinion and
22 disseminating the opinion or notice in a substantially similar
23 manner as the affected opinion was originally disseminated. The
24 requesting party may rely on the original opinion if:

25 (1) all material facts were originally disclosed to
26 the commissioner;

27 (2) the safety and soundness of the affected credit

1 union will not be endangered by further reliance on the original
2 opinion; and

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

6 Sec. 15.4043. EFFECT OF INTERPRETIVE STATEMENT OR OPINION.

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

16 Sec. 15.413. GIFTS OF MONEY OR PROPERTY. The department may
17 accept money or property by gift, bequest, devise, or otherwise for
18 any department purpose authorized by this chapter and Subtitle D,
19 Title 3.

20 Sec. 15.414. AUTHORITY TO CONTRACT FOR PROFESSIONAL OR
21 PERSONAL SERVICES. For the purpose of carrying out the powers,
22 duties, and responsibilities of the department, the commissioner
23 may negotiate, contract, or enter into an agreement for
24 professional or personal services. The commission by rule shall
25 adopt policies and procedures consistent with applicable state
26 procurement practices for soliciting and awarding contracts under
27 this section.

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

3 (9) "Membership share" means a designated share
4 account of a credit union consisting of the balance held by the
5 credit union and established by a credit union member in accordance
6 with the standards specified by the credit union.

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

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

11 (A) being insolvent;

12 (B) having incurred or being likely to incur a
13 loss that will deplete all or substantially all of the credit
14 union's net worth; and

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

17 (12) "Unsafe or unsound practice" means an action or
18 inaction in the operation of a credit union that is contrary to
19 generally accepted standards of prudent operation, the likely
20 consequences of which, if continued, would be abnormal and material
21 risk of loss or danger to a credit union, the credit union's
22 members, or an organization insuring or guaranteeing the credit
23 union's shares and deposits.

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

26 (a) If the commissioner [~~commission~~] proposes to [~~suspend~~
27 ~~or~~] revoke a credit union's certificate of incorporation, the

1 credit union is entitled to a hearing conducted by the State Office
2 of Administrative Hearings.

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

5 (c) The application must contain:

6 (1) two copies of the articles of incorporation, which
7 must state:

8 (A) the name of the credit union;

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

11 (C) that the credit union's term of existence is
12 perpetual;

13 (D) that the credit union's fiscal year is the
14 calendar year;

15 (E) the initial share accounts;

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

18 (G) the number of directors constituting the
19 initial board and the name and address of each person who will serve
20 as director until the first annual meeting or until a successor is
21 elected and qualified; and

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

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

26 (3) a business plan covering three years and providing
27 a detailed explanation of actions intended to accomplish the

1 primary functions of the credit union.

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

4 (a) The name of a credit union must include the words
5 "credit union" or the abbreviation "CU" and an appropriate
6 descriptive word or words, or an acronym made up of initials of the
7 appropriate descriptive word or words and ending in "CU," approved
8 by the commissioner.

9 SECTION 10. Sections 122.006(a), (b), and (c), Finance
10 Code, are amended to read as follows:

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

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

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

19 (A) the character and general fitness of the
20 incorporators and the members of the initial board warrant belief
21 that the credit union's business and affairs will be properly
22 administered in accordance with this subtitle and rules adopted
23 under this subtitle;

24 (B) the character and size of the field of
25 membership to be served by the credit union conform with this
26 subtitle and rules adopted under this subtitle and favor the credit
27 union's economic viability; and

1 (C) the incorporators and the members of the
2 initial board are acting in good faith and are making the
3 application in accordance with the purposes of this subtitle.

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

17 (c) The commissioner by written order shall state the
18 determinations [~~findings~~] required by Subsection (a) and approve or
19 deny the application. The commissioner may make approval of an
20 application conditional and shall include any conditions in the
21 order approving the application.

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

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

1 (b) Unless the amendment is a standard bylaw adopted by the
2 commission, the [The] commissioner in writing shall approve or
3 disapprove an amendment.

4 SECTION 12. Section 122.013, Finance Code, is amended by
5 amending Subsection (c) and adding Subsection (e) to read as
6 follows:

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

10 (1) has violated a rule adopted under this subtitle;

11 (2) is in an unsafe or unsound condition;

12 (3) is engaged in a pattern of unsafe or unsound
13 practices; or

14 (4) does not meet a commission requirement.

15 (e) A foreign credit union from a jurisdiction that allows a
16 credit union to exercise additional powers not granted in this
17 state may not exercise any of those powers in this state until the
18 foreign credit union requests and obtains permission from the
19 commissioner to exercise those powers. If the commissioner
20 determines that there are no safety and soundness concerns, the
21 commissioner shall approve the request and shall publish the powers
22 granted in the manner authorized by Section 15.4041 or 15.4042 for
23 the issuance of an interpretive statement or an opinion. When
24 approved, those powers shall be available to all credit unions
25 authorized to engage in business under this subtitle.

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

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

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

6 (2) subordinated to other creditors.

7 (b) A credit union may apply to the commissioner for the
8 designation of the credit union as an underserved-area credit
9 union.

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

12 (1) at least 50 percent of a defined segment of the
13 credit union's members or potential members who are at least 15
14 years of age earn not more than 80 percent of the state or national
15 household median income, whichever is higher;

16 (2) the credit union submits an acceptable written
17 strategic plan for marketing to and serving the segment described
18 by Subdivision (1); and

19 (3) the credit union submits other information and
20 satisfies other criteria as may reasonably be required by the
21 commissioner.

22 (d) In addition to the powers granted to credit unions under
23 this subtitle or otherwise, an underserved-area credit union may:

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

27 (2) accept shares and deposits from nonmembers.

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

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

8 (d) In this subsection, "good cause" includes the act of
9 physically or verbally abusing a credit union member or employee. A
10 member may have the person's membership in a credit union
11 terminated or suspended [~~be expelled~~] for good cause or for not
12 maintaining membership requirements, under the conditions and in
13 accordance with the procedures provided in [~~by~~] the bylaws. A
14 credit union may also discontinue providing any or all services to a
15 member for good cause without terminating the person's membership.
16 Termination or suspension of a person's membership in the credit
17 union does not relieve the person from any outstanding obligations
18 owed to the credit union.

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

23 (f) A credit union authorized to engage in business under
24 this subtitle may accept as a member any other credit union
25 organized or chartered under the laws of this or another state or of
26 the United States. Those credit union members are not entitled to
27 any voting privileges.

1 SECTION 15. Section 122.052, Finance Code, is amended by
2 amending Subsections (b), (c), and (d) and adding Subsection (e) to
3 read as follows:

4 (b) At an election or other forum used in [In] determining a
5 question requiring action by the members, each member may cast only
6 one vote, regardless of the number of shares the member holds.

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

10 (d) A member that is not an organization may not vote by
11 proxy. A member that is an organization may be represented by and
12 vote through a designated representative [~~one of its members or~~
13 ~~shareholders~~] who is authorized, in writing, by the organization's
14 governing body to represent the organization.

15 (e) The credit union's bylaws may establish a minimum age
16 requirement to vote at a meeting of the members.

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

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

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

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

1 (2) although the director may delegate the performance
2 of those duties, remains responsible for the performance of the
3 duties; ~~and~~

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

6 (4) will exercise the care and diligence reasonable
7 and necessary to administer the affairs of the credit union in a
8 safe and sound manner.

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

10 (f) If and to the extent provided in the bylaws, a director
11 may participate in and act at any meeting of the board by means of
12 electronic communications equipment through which all persons
13 participating in the meeting can communicate with each other.
14 Participation in a meeting in the manner authorized by this
15 subsection constitutes attendance at a meeting.

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

18 Sec. 122.054. QUALIFICATION OF DIRECTORS. (a) The
19 commission by rule shall establish qualifications for a director.
20 The rules must provide that a person may not serve as director if
21 the person:

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

24 (2) is not eligible for coverage under the blanket
25 bond required by Section 122.063 and rules adopted under this
26 subtitle; or

27 (3) has defaulted on payment of a voluntary obligation

1 to the credit union or has otherwise caused the credit union to
2 incur a financial loss.

3 (b) The president or an employee of a credit union may not
4 serve as director of the credit union unless permitted by the credit
5 union's bylaws. If the bylaws permit the president or an employee
6 to serve on the board, the bylaws must allow other persons to serve
7 on the board so that the president and employees of the credit union
8 never constitute a majority of the board.

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

11 (a) The office of a director becomes vacant if the director
12 dies, resigns, is removed, has been absent from more meetings than
13 the total number of absences permitted by commission rule, or does
14 not possess or maintain the qualifications required to serve on the
15 board.

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

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

23 (c) The board may appoint from its membership an executive
24 committee of at least three persons to exercise, between board
25 meetings, authority specifically delegated by the board under
26 conditions specified by the board. At each board meeting, the
27 executive committee shall report to the board regarding any meeting

1 held or action taken by the committee between board meetings.

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

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

6 Sec. 122.059. DELEGATION OF MANAGEMENT AND LOAN APPROVAL
7 AUTHORITY. (a) Without written approval of the commissioner, a
8 credit union may not delegate the authority to manage the credit
9 union to an individual who is not an officer, director, or employee
10 of the credit union or to an organization.

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

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

17 (a) The board chairman and the secretary:

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

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

25 (c) The commissioner may accept a form prescribed by an
26 insuring organization that contains substantially similar
27 information as the certificate of election in lieu of the

1 certificate. The acceptance of such a form does not limit the
2 commissioner's power to require additional information concerning
3 a newly elected or appointed officer, director, or committee
4 member.

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

7 (a) A credit union shall submit to the department on a
8 quarterly [~~semiannual~~] basis a call report, on a form supplied by
9 the department, that states the credit union's financial condition.
10 The commissioner may require a credit union to file additional
11 financial [~~call~~] reports.

12 SECTION 23. Section 122.103, Finance Code, is amended to
13 read as follows:

14 Sec. 122.103. EQUITY CAPITAL. A credit union's equity
15 capital consists of:

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

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

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

21 (4) other forms of capital approved by the
22 commissioner.

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

25 Sec. 122.104. NET WORTH RESERVE ALLOCATIONS. (a) The
26 commission by rule shall require a credit union to contribute to and
27 maintain net worth reserves necessary to protect the interests of

1 its members. The rule may:

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

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

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

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

9 Sec. 122.105. MEMBERSHIP SHARE REDUCTION.

10 SECTION 26. The heading to Subchapter D, Chapter 122,
11 Finance Code, is amended to read as follows:

12 SUBCHAPTER D. MERGER, ~~OR~~ CONSOLIDATION, OR PURCHASE OF ASSETS

13 SECTION 27. Subchapter D, Chapter 122, Finance Code, is
14 amended by adding Section 122.1511 to read as follows:

15 Sec. 122.1511. AUTHORITY TO PURCHASE ASSETS OF ANOTHER
16 FINANCIAL INSTITUTION. (a) A credit union with the prior written
17 approval of the commissioner may purchase all or substantially all
18 of the assets of another financial institution.

19 (b) Except as otherwise expressly provided by another
20 statute, the purchase of all or part of the assets of the selling
21 institution does not make the purchasing credit union responsible
22 for any liability or obligation of the selling institution that the
23 purchasing credit union does not expressly assume.

24 (c) Except as otherwise provided by this subtitle, this
25 section does not authorize or prohibit the purchase by a credit
26 union of all or part of the assets of a corporation or other entity
27 that is not a financial institution.

1 SECTION 28. Section 122.152(a), Finance Code, is amended to
2 read as follows:

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

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

10 (2) states:

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

13 (B) the board's vote for and against adoption of
14 the plan;

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

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

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

20 SECTION 29. The heading to Section 122.255, Finance Code,
21 is amended to read as follows:

22 Sec. 122.255. DETERMINATION OF MISCONDUCT [~~BY~~
23 ~~COMMISSIONER~~].

24 SECTION 30. Section 122.256, Finance Code, is amended to
25 read as follows:

26 Sec. 122.256. DETERMINATION [~~DEMAND~~] LETTER; BOARD
27 MEETING. (a) If the commissioner determines from examination or

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

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

18 SECTION 31. Section 122.257(a), Finance Code, is amended to
19 read as follows:

20 (a) If the commissioner makes a finding listed in Section
21 122.255 and determines that an order to cease and desist is
22 necessary and in the best interest of the credit union involved and
23 its depositors, creditors, and members, the commissioner may serve
24 on the credit union, its board, and each offending person an order
25 to cease and desist from a violation or practice specified in the
26 order and to take affirmative action that the commissioner
27 considers necessary to correct a condition resulting from a

1 violation or unsafe or unsound practice found.

2 SECTION 32. Sections 122.258(a) and (c), Finance Code, are
3 amended to read as follows:

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

9 (1) finds that:

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

15 (B) removal or prohibition is necessary and in
16 the best interest of the credit union and its depositors,
17 creditors, and members; or

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

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

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

26 (C) an act that otherwise threatens immediate and
27 irreparable harm to the public or the credit union or its members,

1 depositors, or creditors.

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

12 SECTION 33. Section 122.260, Finance Code, is amended by
13 amending Subsection (c) and adding Subsection (d) to read as
14 follows:

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

20 (1) the imposition of the penalty or the delinquency
21 of the stated penalty amount; and

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

24 (d) The attorney general is entitled to recover reasonable
25 attorney's fees from the credit union or the designated person, or
26 both, if the attorney general prevails in a judicial action
27 necessary for collection of the administrative penalty.

1 SECTION 34. Section 122.261, Finance Code, is amended to
2 read as follows:

3 Sec. 122.261. CONFIDENTIALITY. (a) A determination
4 letter, a cease and desist order, a removal order, [and] each copy
5 of a notice or [7] correspondence, and all [or] other documents or
6 records [record] relating to an order or determination letter
7 issued under this subchapter [concerning a violation or unsound
8 practice] are confidential and are not subject to public disclosure
9 except in an action authorized by this subtitle or other authority.

10 (b) The commissioner may release [disclose the] information
11 regarding the existence of a final order to the public [described by
12 Subsection (a) to a share and deposit guaranty corporation or
13 credit union or to a department, agency, or instrumentality of this
14 state, another state, or the United States] if the commissioner
15 concludes that [determines] the release of the information would
16 enhance effective [disclosure is necessary or proper for the]
17 enforcement of the order [laws of this state or the United States].

18 SECTION 35. 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 conferred under Subsection (a), a credit union has the
26 powers of a foreign credit union operating a branch in this state if
27 the commissioner finds that exercise of those powers is convenient

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

6 SECTION 36. Section 123.101, Finance Code, is amended to
7 read as follows:

8 Sec. 123.101. CONTRACTS. (a) A credit union may enter into
9 [make] contracts as provided by this section.

10 (b) Without prior written approval of the commissioner, a
11 credit union may not contract with an individual who is not an
12 officer, director, or employee of the credit union or with an
13 organization.

14 SECTION 37. Section 123.106, Finance Code, is amended to
15 read as follows:

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

21 SECTION 38. Subchapter B, Chapter 123, Finance Code, is
22 amended by adding Section 123.111 to read as follows:

23 Sec. 123.111. RIGHT TO ACT TO MITIGATE OR AVOID LOSS. This
24 subtitle does not prohibit a credit union from investing its money,
25 operating a business, managing or dealing in property, or taking
26 any other action at any time that is reasonably necessary to avoid
27 or mitigate a loss on a loan or on an investment made or obligation

1 created in good faith and in the usual course of the credit union's
2 business, as authorized by this subtitle or a rule adopted by the
3 commission.

4 SECTION 39. Subchapter C, Chapter 123, Finance Code, is
5 amended by adding Section 123.211 to read as follows:

6 Sec. 123.211. CERTIFICATES OF INDEBTEDNESS. The commission
7 by rule may authorize a credit union to issue certificates of
8 indebtedness that are subordinated to all other claims of credit
9 union creditors.

10 SECTION 40. Section 124.201, Finance Code, is amended to
11 read as follows:

12 Sec. 124.201. AUTHORIZATION. In accordance with
13 limitations imposed by [~~Subject to~~] Section 124.202, a credit union
14 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 41. 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 42. 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 43. Section 125.002, Finance Code, is amended to
13 read as follows:

14 Sec. 125.002. MEMBER'S SHARES; SHARE ACCOUNT. (a) Shares
15 and membership shares shall be subscribed to and paid for in the
16 manner prescribed by the bylaws. A credit union may limit the
17 number of shares that may be owned by a member, but any such
18 limitation must be applied 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 44. 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 45. 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) an indemnification of the credit union; and

25 (7) any other information required by the credit
26 union.

27 (b) The credit union may accept and administer the trust

1 account, in accordance with the certificate of trust, without
2 requiring a copy of the trust agreement. The credit union is not
3 liable for administering the account as provided by the certificate
4 of trust, even if the certificate of trust is contrary to the terms
5 of the trust agreement.

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

27 (d) This section does not require a credit union to accept

1 an account from a trustee or to search for the location of a named
2 beneficiary that is not named in its records.

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

5 SECTION 46. Section 125.401, Finance Code, is amended to
6 read as follows:

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

8 (1) "Credit union" includes:

9 (A) a credit union organized under the laws of
10 this state;

11 (B) a foreign credit union; and

12 (C) a federal credit union.

13 (2) "Out-of-state credit union" means a credit union
14 that:

15 (A) is not organized under the laws of this
16 state; and

17 (B) has its main or principal office in another
18 state or country.

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

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

22 (B) has its main or principal office in this
23 state.

24 (b) A credit union [~~or federal credit union~~] doing business
25 in this state must be served with citation or other appropriate
26 process issued from a court in connection with a suit instituted by
27 a third party to recover or establish an interest in a deposit or

1 share account before the credit union [~~or federal credit union~~] is
2 required to:

- 3 (1) recognize the third party's claim;
4 (2) withhold payment of the account to any party to the
5 account; or
6 (3) withhold payment to the order of any party to the
7 account.

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

13 (d) A claim against a member of an out-of-state credit union
14 that files a registration statement under Section 201.102 or a
15 Texas credit union that files a registration statement under
16 Section 201.103 is not effective with respect to the credit union if
17 the claim is served or delivered to an address other than the
18 address of the credit union's registered agent as provided in the
19 registration.

20 (e) To prevent or limit a credit union's compliance with or
21 response to a claim subject to this section, the depositor, joint
22 account owner, or member may seek an appropriate remedy, including
23 a restraining order, injunction, or protective order, to prevent or
24 suspend the credit union's response to a claim against the member.

25 (f) A credit union that does not register with the secretary
26 of state under Section 201.102 or 201.103 is subject to service or
27 delivery of all claims against depositors, joint account owners, or

1 members of the credit union or against the credit union itself by
2 serving the president or vice president of the credit union or as
3 otherwise provided by law.

4 SECTION 47. Section 126.002, Finance Code, is amended by
5 amending Subsections (a) and (b) and adding Subsections (e) and (f)
6 to read as follows:

7 (a) Except as provided by Subsections (b) and (c),
8 information obtained directly or indirectly by the department in
9 any manner, including by application or examination, concerning
10 [that relates to] the financial condition or business affairs of a
11 credit union and the files and records of the department relating to
12 that information, except a statement intended for publication, are
13 confidential.

14 (b) Confidential information may not be disclosed to a
15 member of the commission, and a member of the commission may not be
16 given access to the files or records of the department, except that
17 the [The] commissioner may disclose to the commission information,
18 files, and records pertinent to a hearing or matter pending before
19 the commission or the commissioner.

20 (e) Confidential information that is provided by the
21 department to a credit union, organization, or service provider of
22 a credit union, whether in the form of a report of examination or
23 otherwise, is the confidential property of the department. The
24 recipient or an officer, director, employee, or agent of the
25 recipient may not make the information public and may not disclose
26 the information to a person not officially connected to the
27 recipient as an officer, director, employee, attorney, auditor, or

1 independent auditor, except as authorized by rules adopted under
2 this subtitle.

3 (f) Discovery of confidential information from a person
4 subject to this subtitle or Chapter 15 under subpoena or other legal
5 process must comply with rules adopted under this subtitle, Chapter
6 15, and any other applicable law. The rules may:

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

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

12 SECTION 48. Section 126.051, Finance Code, is amended to
13 read as follows:

14 Sec. 126.051. EXAMINATIONS. (a) The department, through
15 examiners it appoints and in accordance with commission rules,
16 shall periodically examine the books and records of each credit
17 union.

18 (b) In lieu of an examination under this section, the
19 commissioner may accept:

20 (1) the examination report of a regulator authorized
21 to examine a credit union, foreign credit union, federal credit
22 union, or other financial institution; or

23 (2) the audit report of an accountant, satisfactory to
24 the commissioner, who has made and submitted a report of the
25 condition of the affairs of a credit union, foreign credit union,
26 federal credit union, or other financial institution.

27 (c) The commissioner may accept all or part of a report in

1 lieu of all or part of an examination. An accepted portion of the
2 report has the same validity as an examination under this section.

3 SECTION 49. Section 126.053, Finance Code, is amended to
4 read as follows:

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

8 (1) subpoena [summon] witnesses;

9 (2) administer an oath or affirmation to a person,
10 including any [an] officer, director, agent, or employee of a
11 credit union, and examine the person under oath or affirmation on
12 any subject the commissioner considers pertinent to the financial
13 condition or the safety and soundness of the activities of a credit
14 union; or

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

18 (b) The commissioner may apply to a district court in Travis
19 County for an order requiring a person to obey a subpoena, to
20 appear, or to answer questions in connection with the examination
21 or investigation.

22 (c) The court shall issue an order under Subsection (b) if
23 the court finds good cause to issue the subpoena or to take
24 testimony.

25 SECTION 50. Section 126.108, Finance Code, is amended to
26 read as follows:

27 Sec. 126.108. CONFIDENTIALITY; DISCLOSURE. A

1 conservatorship order and a copy of a notice, ~~[or]~~ correspondence,
2 transcript, pleading, or other document relating to the order are
3 ~~[is]~~ confidential and may be disclosed only in a related legal
4 proceeding or as otherwise authorized by law. The commissioner may
5 release to the public information regarding the existence of an
6 order if the commissioner concludes that release of the information
7 would enhance effective enforcement of the order.

8 SECTION 51. Section 126.159, Finance Code, is amended to
9 read as follows:

10 Sec. 126.159. COST OF CONSERVATORSHIP. (a) The
11 commissioner shall determine and approve any reasonable expenses
12 attributable to the service of a conservator, including costs
13 incurred by the department and the compensation and expenses of the
14 conservator and any professional employees appointed to represent
15 or assist the conservator. The commissioner or an employee of the
16 department may not receive compensation in addition to salary for
17 serving as conservator, but the department may receive
18 reimbursement for the fully allocated personnel cost associated
19 with the service of the commissioner or the employee as conservator
20 ~~[the cost of the conservatorship]~~.

21 (b) All approved expenses ~~[The cost of conservatorship]~~
22 shall be paid by ~~[from]~~ the credit union ~~[union's assets as the~~
23 ~~commissioner directs]~~. The department has a lien against the
24 assets and money of the credit union to secure payment of approved
25 expenses. The lien has a higher priority than any other lien
26 against the credit union.

27 (c) Notwithstanding this subchapter, the credit union may

1 retain attorneys and hire other persons to assist the credit union
2 in contesting or satisfying the requirements of an order of
3 conservatorship. The commissioner shall authorize the payment of
4 reasonable fees and expenses for the attorneys and other persons as
5 expenses of the conservatorship.

6 (d) The commissioner may waive or defer collection of
7 assessment or examination fees by the department from the credit
8 union during a period of conservatorship if the waiver or deferral
9 would appear to benefit the prospects for rehabilitation. As a
10 condition of release from conservatorship, the commissioner may
11 require the rehabilitated credit union to pay or develop a
12 reasonable plan for payment of any deferred fees.

13 SECTION 52. Section 126.160(a), Finance Code, is amended to
14 read as follows:

15 (a) A suit filed against a credit union [~~or its conservator~~]
16 while the credit union is under [a] conservatorship, or against a
17 person in connection with an action taken or decision made by that
18 person as a conservator of a credit union, [~~order is in effect~~] must
19 be brought in Travis County regardless of whether the credit union
20 remains under conservatorship.

21 SECTION 53. Subchapter E, Chapter 126, Finance Code, is
22 amended by adding Section 126.206 to read as follows:

23 Sec. 126.206. NATIONAL CREDIT UNION ADMINISTRATION AS
24 LIQUIDATING AGENT. (a) The commissioner may tender a credit union
25 that has been closed for liquidation to the National Credit Union
26 Administration or its successor as liquidating agent if the shares
27 and deposits of the credit union were insured by the National Credit

1 Union Share Insurance Fund or its successor on the date of closing.

2 (b) After acceptance of tender of the credit union, the
3 National Credit Union Administration or its successor, as
4 liquidating agent of the credit union, shall perform the acts and
5 duties that it considers necessary or desirable and that are
6 permitted or required by federal law or this chapter. The National
7 Credit Union Administration, as liquidating agent, is not subject
8 to commission control.

9 (c) If the National Credit Union Share Insurance Fund pays
10 the insured share and deposit liabilities of a credit union that is
11 being liquidated under this subchapter, the National Credit Union
12 Administration is subrogated, to the extent of the payment, to all
13 rights that the owners of the share or deposit accounts have against
14 the credit union.

15 SECTION 54. Section 126.454, Finance Code, is amended to
16 read as follows:

17 Sec. 126.454. CREDIT UNION OPERATIONS BEFORE AND AFTER
18 VOTE. Immediately after notice under Section 126.453 is mailed,
19 the commissioner may restrict control or give direction with
20 respect to the continued business of the credit union pending
21 consideration of voluntary liquidation by the members. During that
22 period, no member shall withdraw an aggregate amount in excess of
23 the share insurance covered by [~~shall cease to operate except to~~
24 ~~accept loan payments or other obligations due~~] the credit union. No
25 new extensions of credit shall be financed during the period
26 between the board of directors' adoption of the resolution
27 recommending voluntary liquidation and the membership meeting

1 called to consider voluntary liquidation, except for the issuance
2 of loans fully secured by a pledge of shares and the financing of
3 outstanding loan commitments approved before adoption of the
4 resolution. If the vote to dissolve and liquidate the credit union
5 is affirmative, the credit union may conduct only business
6 incidental to liquidation.

7 SECTION 55. Section 126.455, Finance Code, is amended to
8 read as follows:

9 Sec. 126.455. VOTE ON VOLUNTARY LIQUIDATION. At a special
10 meeting called to consider the proposed liquidation, a majority of
11 the credit union members, but not less than a quorum, may vote to
12 dissolve and liquidate the credit union. Those members casting
13 votes by mail or at the meeting constitute a quorum for the
14 transaction of business at the special meeting, notwithstanding a
15 bylaw provision to the contrary.

16 SECTION 56. Section 126.457, Finance Code, is amended to
17 read as follows:

18 Sec. 126.457. APPOINTMENT OF LIQUIDATING AGENT. (a) If the
19 members approve the liquidation, the board shall appoint a
20 liquidating agent to:

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

27 (b) The National Credit Union Administration or other

1 insuring organization has the right of first refusal to be
2 appointed as liquidating agent of any credit union that it insures.

3 SECTION 57. Subchapter J, Chapter 126, Finance Code, is
4 amended by adding Section 126.458 to read as follows:

5 Sec. 126.458. APPLICATION OF LAW TO CREDIT UNION IN
6 VOLUNTARY LIQUIDATION. A credit union in the process of voluntary
7 dissolution and liquidation remains subject to this subtitle and
8 Chapter 15, including provisions for examination by the
9 commissioner, and the credit union shall furnish reports as
10 required by the commissioner.

11 SECTION 58. (a) This Act takes effect September 1, 2003.

12 (b) The change in law made by this Act by the amendment of
13 Section 125.401, Finance Code, applies only to a claim that arises
14 on or after the effective date of this Act. A claim that arose
15 before the effective date of this Act is governed by the law as it
16 existed immediately before that date, and the former law is
17 continued in effect for that purpose.