

1-1 By: Flynn (Senate Sponsor - Estes) H.B. No. 2735
1-2 (In the Senate - Received from the House May 5, 2009;
1-3 May 6, 2009, read first time and referred to Committee on
1-4 Government Organization; May 13, 2009, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 13, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the Credit Union
1-9 Department and the Credit Union Commission.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 15.001(a), Finance Code, is amended to
1-12 read as follows:

1-13 (a) In this chapter, "Texas trade association" means a
1-14 ~~[nonprofit,~~ cooperative~~],~~ and voluntarily joined statewide
1-15 association of business or professional competitors in this state
1-16 designed to assist its members and its industry or profession in
1-17 dealing with mutual business or professional problems and in
1-18 promoting their common interest.

1-19 SECTION 2. Section 15.201(c), Finance Code, is amended to
1-20 read as follows:

1-21 (c) Appointments ~~[An appointment]~~ to the commission shall
1-22 ~~[must]~~ be made without regard to the race, color, ~~[creed,~~
1-23 disability, sex, religion, age, or national origin of the
1-24 appointees ~~[appointee]~~.

1-25 SECTION 3. Section 15.202, Finance Code, is amended by
1-26 amending Subsection (b) and adding Subsection (c) to read as
1-27 follows:

1-28 (b) A person may not be a member of the commission if
1-29 ~~[commission member may not be]:~~

1-30 (1) the person is an officer, employee, or paid
1-31 consultant of a Texas trade association in the financial
1-32 institutions field ~~[an officer, employee, or paid consultant of a~~
1-33 ~~trade association representing or affiliated with a financial~~
1-34 ~~institution group or an entity affiliated with financial~~
1-35 ~~institutions]; or~~

1-36 (2) the person's spouse is an officer, manager, or paid
1-37 consultant of a Texas trade association in the financial
1-38 institutions field ~~[a spouse of an officer, manager, or paid~~
1-39 ~~consultant of a trade association representing or affiliated with a~~
1-40 ~~financial institution group or an entity affiliated with financial~~
1-41 ~~institutions; or~~

1-42 ~~[(3) a person who is required to register as a lobbyist~~
1-43 ~~under Chapter 305, Government Code, because of the person's~~
1-44 ~~activities for compensation on behalf of a profession related to~~
1-45 ~~the operation of the commission].~~

1-46 (c) A person may not be a member of the commission if the
1-47 person is required to register as a lobbyist under Chapter 305,
1-48 Government Code, because of the person's activities for
1-49 compensation on behalf of a profession related to the operation of
1-50 the department.

1-51 SECTION 4. Section 15.2041, Finance Code, is amended to
1-52 read as follows:

1-53 Sec. 15.2041. TRAINING PROGRAM. (a) A ~~[To be eligible to~~
1-54 ~~take office as a member of the commission, a]~~ person who is
1-55 appointed to and qualifies for office as a member of the commission
1-56 may not vote, deliberate, or be counted as a member in attendance at
1-57 a meeting of the commission until the person completes ~~[the~~
1-58 ~~commission must complete at least one course of]~~ a training program
1-59 that complies with this section. ~~[A commission member must~~
1-60 ~~complete a training program that complies with Subsection (b) not~~
1-61 ~~later than the 180th day after the date on which the person takes~~
1-62 ~~office.]~~

1-63 (b) The ~~[A]~~ training program ~~[established under this~~
1-64 ~~section]~~ must provide the person with information ~~[to the member]~~

regarding:

(1) the legislation that created the department
~~[enabling legislation that created the department and its
 policy-making body to which the member is appointed to serve];~~

(2) the programs, functions, rules, and budget of the
 department ~~[operated by the department];~~

(3) ~~[the role and functions of the department,
 (4) the rules of the commission with an emphasis on
 the rules that relate to disciplinary and investigatory authority,~~

~~(5) the current budget for the department,
 (6)] the results of the most recent formal audit of~~

the department;
 (4) ~~(7)]~~ the requirements of laws relating to ~~[the:~~

~~[A)] open meetings, public information, [law,
 Chapter 551, Government Code,~~

~~[(B) open records law, Chapter 552, Government
 Code; and~~

~~[(C)] administrative procedure, and conflicts
 [law, Chapter 2001, Government Code,~~

~~[(8) the requirements of the conflict] of interest
 [laws and other laws relating to public officials];~~

(5) ~~(9)]~~ any applicable ethics policies adopted by
 the department or the Texas Ethics Commission; and

(6) ~~(10)]~~ the basic principles and responsibilities
 of credit union management.

(c) A person appointed to the commission is entitled to
 reimbursement ~~[for travel expenses incurred in attending the
 training program]~~, as provided by the General Appropriations Act,
for the travel expenses incurred in attending the training program
 regardless of whether the attendance at the program occurs before
 or after the person qualifies for office [and as if the person were
 a member of the commission].

SECTION 5. Sections 15.206(b), (c), and (d), Finance Code,
 are amended to read as follows:

(b) It is a ground ~~[grounds]~~ for removal from the commission
that ~~[if]~~ a member:

(1) does not have at the time of taking office
~~[appointment]~~ the ~~[applicable]~~ qualifications required by Sections
 15.202, 15.203, and 15.204;

(2) does not maintain during service on the commission
 the applicable qualifications required by Sections 15.202, 15.203,
 and 15.204;

(3) is ineligible for membership under ~~[violates a
 prohibition established by]~~ Section 15.202, 15.203, or 15.204;

(4) cannot, because of illness or disability,
 discharge the member's duties for a substantial part of the member's
 term ~~[for which the member is appointed];~~ or

(5) is absent from more than half of the regularly
 scheduled commission meetings that the member is eligible to attend
 during a calendar year without an excuse approved by a majority vote
 of the commission.

(c) The validity of an action of the commission is not
 affected by the fact that it is ~~[was]~~ taken when a ground for
 removal of a commission member exists ~~[existed].~~

(d) If the commissioner has knowledge that a potential
 ground for removal exists, the commissioner shall notify the
 presiding officer of the commission of the potential ground. The
 presiding officer shall then notify the governor and the attorney
 general that a potential ground for removal exists. If the
 potential ground for removal involves the presiding officer, the
 commissioner shall notify the next highest ranking officer of the
 commission, who shall then notify the governor and the attorney
 general that a potential ground for removal exists.

SECTION 6. Section 15.210, Finance Code, is amended to read
 as follows:

Sec. 15.210. PRESIDING OFFICER. The governor shall
 designate a member of the commission as the presiding officer of the
 commission to serve in that capacity at the pleasure ~~[will]~~ of the
 governor.

SECTION 7. Section 15.212, Finance Code, is amended to read as follows:

Sec. 15.212. SUNSET PROVISION. The Credit Union Department and the Credit Union Commission are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department and commission are [is] abolished September 1, 2021 [2009].

SECTION 8. Section 15.302(c), Finance Code, is amended to read as follows:

(c) A person may not be appointed [The] commissioner if [may not]:

(1) the person is an [be a salaried] officer, employee, or paid consultant of a Texas trade association in the financial institutions field [credit union industry]; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field [be related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is a salaried officer, employee, or consultant of a trade association in the credit union industry].

SECTION 9. Section 15.305, Finance Code, is amended to read as follows:

Sec. 15.305. GENERAL COUNSEL. A person may not act as the general counsel to the commission or the department if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department [commission, may not serve as general counsel to the commission].

SECTION 10. Section 15.311, Finance Code, is amended to read as follows:

Sec. 15.311. QUALIFICATIONS OF EMPLOYEES. A person may not be a department [an] employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if [of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, if the person is]:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field [representing or affiliated with a financial institution group or an entity affiliated with financial institutions]; or

(2) the person's [a] spouse is [of] an officer, manager, or paid consultant of a Texas trade association in the financial institutions field [representing or affiliated with a financial institution group or an entity affiliated with financial institutions].

SECTION 11. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4024 to read as follows:

Sec. 15.4024. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy

adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

SECTION 12. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4044 to read as follows:

Sec. 15.4044. FEES. The department may charge a late fee against a credit union for late payment of its operating fees.

SECTION 13. Sections 15.409(b), (c), (d), (e), (f), and (g), Finance Code, are amended to read as follows:

(b) The department ~~[commissioner]~~ shall maintain a system to promptly and efficiently act on complaints ~~[supervise the establishment and maintenance of files regarding each written complaint]~~ filed with the department ~~[that the department has authority to resolve]~~. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(c) ~~[A file established and maintained under this section must include all relevant information regarding the nature, status, and disposition of a complaint.]~~

~~[(d)]~~ The department shall make information available describing its ~~[provide to a person filing a complaint and the persons complained about the department's policies and]~~ procedures for ~~[concerning]~~ complaint investigation and resolution.

~~(d)~~ The ~~[(e)]~~ At least quarterly until final disposition of any written complaint that is filed with the department, the department shall periodically notify the complaint parties ~~[to the complaint]~~ of the ~~[its]~~ status of ~~[unless]~~ the complaint until final disposition ~~[notice would jeopardize an undercover investigation].~~

~~(e)~~ ~~[(f)]~~ The department shall keep information about each complaint filed with the department. The information must include:

~~[(1) the date the complaint is received;~~
~~[(2) the name of the complainant;~~
~~[(3) the subject matter of the complaint;~~
~~[(4) a record of all persons contacted in relation to the complaint;~~

~~[(5) a summary of the results of the review or investigation of the complaint; and~~

~~[(6) for a complaint that the department closed without taking action, an explanation of the reason the complaint was closed without action.]~~

~~[(g)]~~ The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, ~~[and]~~ telephone number, and Internet website of the department for the purpose of directing complaints to the department. The commission shall ~~[may]~~ provide for that notification:

(1) on the Internet website of ~~[each registration form, application, or written contract for services of]~~ a credit union regulated under this chapter and Subtitle D, Title 3, if the credit union maintains a website;

(2) on a sign prominently displayed in the place of business of each credit union regulated under this chapter and Subtitle D, Title 3; and ~~[or]~~

(3) in any newsletter distributed ~~[a bill for service provided]~~ by a credit union regulated under this chapter and Subtitle D, Title 3, if the credit union distributes a newsletter.

(f) The commission by rule may establish other methods by which credit unions that do not have an Internet website or do not distribute a newsletter may make the information described by Subsection (e) more readily available to credit unions' customers and service recipients.

SECTION 14. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4105 to read as follows:

Sec. 15.4105. ANNUAL REPORT TO MEMBERS. (a) The commission

shall adopt, and the commissioner shall enforce, reasonable rules requiring a credit union regulated under this chapter and Subtitle D, Title 3, to provide an annual report to the credit union's members regarding the credit union's financial condition and management. The report must:

(1) include a current balance sheet;
 (2) include an income and expense statement;
 (3) contain the name and date of expiration of the term of office of each member serving on the board of directors;
 (4) contain a brief description of any changes, since the preceding report was provided under this section, to the credit union's:

(A) management;
 (B) bylaws;
 (C) articles of incorporation;
 (D) financial condition;
 (E) membership size; and
 (F) services offered; and
 (5) contain any other information the commission considers necessary to ensure that credit union members are provided with basic knowledge of the credit union's financial condition and management.

(b) In adopting rules under this section, the commission must ensure that a credit union:

(1) updates the report before the credit union's annual organizational meeting;
 (2) makes the report available to members throughout the year on the credit union's Internet website, if the credit union maintains a website; and
 (3) provides the report to credit union members by an alternative method, including delivery at the credit union's annual organizational meeting, if the credit union does not have an Internet website.

SECTION 15. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.416 to read as follows:

Sec. 15.416. USE OF TECHNOLOGY. The commission shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

SECTION 16. Chapter 15, Finance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. RULES REGARDING USE OF ADVISORY COMMITTEES

Sec. 15.501. RULEMAKING AUTHORITY. (a) The commission shall adopt rules, in compliance with Section 15.407 and Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by the commission, including rules governing an advisory committee's:

(1) purpose, role, responsibility, and goals;
 (2) size and quorum requirements;
 (3) qualifications for membership, including experience requirements and geographic representation;
 (4) appointment procedures;
 (5) terms of service;
 (6) training requirements; and
 (7) duration.

(b) An advisory committee must be structured and used to advise the commission. An advisory committee may not be responsible for rulemaking or policymaking.

Sec. 15.502. PERIODIC EVALUATION. The commission shall by rule establish a process by which the commission shall periodically evaluate an advisory committee to ensure its continued necessity. The commission may retain or develop committees as appropriate to meet changing needs.

Sec. 15.503. COMPLIANCE WITH OPEN MEETINGS ACT. A commission advisory committee must comply with Chapter 551, Government Code.

SECTION 17. Subchapter C, Chapter 122, Finance Code, is amended by adding Section 122.107 to read as follows:

Sec. 122.107. NOTICE OF AVAILABILITY OF CERTAIN DOCUMENTS.
 (a) A credit union regulated under this subtitle and Chapter 15 shall give notice to the credit union's members of the availability on request of a member of documents related to the credit union's finances and management, including:

(1) a summary of the most recent annual audit;
 (2) the most recent statement of financial condition, such as nonconfidential pages of the quarterly call report provided under Section 122.101;

(3) a copy of IRS Form 990 or its successor; and
 (4) any other documents that members are entitled to possess, as determined by the commission.

(b) The notice required by Subsection (a) must be given:

(1) on the credit union's Internet website if the credit union maintains a website; and

(2) in a newsletter twice a year if the credit union distributes a newsletter.

(c) The commission shall adopt reasonable rules to implement this section, including rules prescribing an alternative method for credit unions that do not maintain an Internet website or distribute a newsletter to provide their members with notice of the documents required by Subsection (a).

SECTION 18. The heading to Section 122.257, Finance Code, is amended to read as follows:

Sec. 122.257. CEASE AND DESIST ORDER FOR CREDIT UNIONS.

SECTION 19. Subchapter F, Chapter 122, Finance Code, is amended by adding Section 122.2575 to read as follows:

Sec. 122.2575. CEASE AND DESIST ORDER FOR OTHER PERSONS.

(a) If it appears to the commissioner that a person who is not authorized to engage in business under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.) is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the regulation of credit unions, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action to enforce compliance with the applicable state statute or rule relating to the regulation of credit unions. The order must contain a reasonably detailed statement of the fact on which the order is made.

(b) If a person against whom an order under this section is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code.

(c) An order under this section becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. If a hearing has not been requested not later than the 30th day after the date the order is made, the order is considered final and nonappealable.

SECTION 20. The change in law made by this Act in the qualifications of the members of the Credit Union Commission does not affect the entitlement of a person serving as a member of the commission immediately before September 1, 2009, to continue to carry out the functions of the person's office for the remainder of the person's term. The change in law applies only to a person appointed on or after September 1, 2009. This Act does not prohibit a person who is a member of the Credit Union Commission immediately before September 1, 2009, from being reappointed as a commission member if the person has the qualifications required for the position under Chapter 15, Finance Code, as amended by this Act.

SECTION 21. This Act takes effect September 1, 2009.

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