

## **BILL ANALYSIS**

S.B. 244  
By: Carona  
Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The credit union department of the Credit Union Commission has regulatory authority over state-chartered credit unions and periodically performs a comprehensive study of statutes relating to credit unions. Interested parties report that the most recent study completed by the department resulted in a number of recommended updates to such statutes, including clarification of supervisory and regulatory matters, removal of outdated references, enhancement of corporate governance, and the provision of rules for the disclosure of information. The study also highlighted a need for compliance guidelines for federal and foreign credit unions, for clarification of the process by which a state-chartered credit union converts to a federal credit union, and for granting state-chartered credit unions limited parity with federal credit unions on interest rates for certain losses.

S.B. 244 seeks to assist the continued efforts of credit unions to efficiently provide financial services and ensure sound practices by implementing into current law credit union department recommendations relating to the administration, operation, supervision, and regulation of credit unions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Credit Union Commission in SECTIONS 5 and 17 of this bill.

### **ANALYSIS**

S.B. 244 amends the Finance Code to authorize the credit union commissioner, to the extent necessary to the credit union department's authority to supervise and regulate credit unions, to require each credit union to conduct business in compliance with federal laws that apply to credit unions. The bill authorizes the commissioner and state and federal agencies, in order to ensure effective coordination among and between the department and such agencies, to enter into cooperative, coordinating, or information-sharing agreements that are necessary or proper to enforce the state or federal laws applicable to credit unions.

S.B. 244 clarifies that a certificate of incorporation issued by the commissioner must be accepted by the credit union in order for the acceptance to be considered conclusive evidence that the credit union is authorized to do business. The bill specifies that the written notice a credit union is required to provide to the commissioner before establishing additional offices or service facilities must be provided not later than the 30th day before the date the credit union establishes such offices or facilities and that the written notification the credit union is required to give the commissioner after the date the new office or service facility begins operating must be provided not later than the 10th business day after the date such an office or facility begins operating. The bill specifies that an unmanned teller machine is not considered a service facility for purposes of those written notifications. The bill authorizes a credit union, in accordance with rules adopted by the Credit Union Commission, to close any office or service facility after notifying the commissioner in writing and provided that the credit union designates and maintains an office as

its principal place of business in Texas.

S.B. 244 authorizes the commissioner to suspend or revoke a foreign credit union's authority to do business in Texas if the commissioner finds that the foreign credit union has failed to conduct its business in Texas in a manner consistent with state laws, refuses to comply with an order of the commissioner, refuses to comply with a request by the commissioner to review the credit union's books and records, or has not met or does not meet a requirement imposed by commission rules. The bill removes provisions relating to the commissioner's authority to suspend or revoke the foreign credit union's authority to do business in Texas if the commission finds that the foreign credit union has violated a rule adopted under any statutory provision relating to credit unions, is engaged in a pattern of unsafe or unsound practices, or does not meet a commission requirement.

S.B. 244 authorizes the commissioner, on request by the credit union regulatory agency of a state contiguous to Texas that experiences an emergency, to authorize one or more credit unions located in that state to open temporary offices in Texas to more promptly restore credit union services to their members. The bill requires the commissioner to issue an order permitting the temporary office and specifying the period the office may remain open. The bill authorizes the commissioner, on a finding that the conditions requiring the temporary office continue to exist, to extend the period the office may remain open. The bill authorizes a credit union to convert a temporary office to a permanent location and to operate as a foreign credit union if it qualifies to do business in Texas as a foreign credit union under relevant statutory provisions and under commission rules.

S.B. 244 prohibits a member of the board of directors of a credit union from voting by proxy. The bill increases from three to six the number of individuals the board of directors is authorized to appoint to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and to otherwise aid the board in carrying out its duties and responsibilities. The bill requires an honorary or advisory director to hold in confidence all information the director receives about a credit union during the director's service, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by commission rules or applicable law.

S.B. 244 requires a credit union, within the time prescribed by the commissioner, to submit to the commissioner, in a form approved by the department, a certificate of election that provides the name and address of each officer, director, and committee member elected or appointed to the credit union's board of directors or executive committee. The bill removes provisions requiring the board's chairman and secretary to execute a certificate of election stating the name and address of each officer, director, and committee member elected or appointed and to file a copy of that certificate with the department within a specified period.

S.B. 244 prohibits a person, while serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union from directly or indirectly participating in the deliberation on or determination of a question affecting the pecuniary interest of the person's spouse or another person living in the person's household.

S.B. 244 removes provisions authorizing a credit union to elect to indemnify a person other than a director, officer, employee, or agent of the credit union. The bill removes provisions authorizing a credit union to purchase indemnity insurance by adopting the indemnification and insurance procedures of the Texas Non-Profit Corporation Act, or in another manner determined by the board, and instead authorizes the credit union to purchase insurance as if it were an "enterprise" as defined by specified Business Organizations Code provisions, under and subject to the credit union's bylaws and written policy. The bill prohibits a credit union from providing any indemnification or insurance that would not be permissible under Business Organizations Code provisions relating to indemnification and insurance but authorizes the credit union to elect to impose the credit union's own limitations on indemnification.

S.B. 244 specifies that, on the issuance of a charter by the National Credit Union Administration, a credit union organized under Texas law and converted to a credit union under U.S. law ceases to be a credit union incorporated under Texas law and is no longer subject to the supervision and regulation of the commissioner and department. The bill requires the converted credit union to file with the commissioner a copy of the charter issued to the credit union by the National Credit Union Administration and specifies that failure to file the required copy of the charter does not affect the validity of the conversion.

S.B. 244 requires a credit union that changes the location of its principal place of business or any additional office or service facility to notify the commissioner in writing of the new location and the scheduled or effective date of the change, rather than authorizing the credit union to change its principal place of business or a subsidiary place of business to another location by notifying the commissioner in writing of the new address and the effective date of the change. The bill requires a credit union to submit notice to the commissioner not later than the 30th day before the scheduled or effective date of the change but authorizes the commissioner to waive or reduce the timing of that notice requirement.

S.B. 244 prohibits the interest rate on a loan to a member of a credit union from exceeding 28 percent a year to the extent that federal credit unions are permitted to charge that rate.

S.B. 244 authorizes the commission to adopt reasonable rules relating to the permissible disclosure of nonpublic personal information about the accounts of credit union members. The bill requires the directors, officers, committee members, and employees and any honorary or advisory directors of a credit union to hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by commission rules or applicable law.

S.B. 244 includes a share insuring organization among the entities to which the commissioner is authorized to disclose any information concerning the financial condition or business affairs of a credit union, and the files and records of the department relating to that information, on the determination that such disclosure is necessary or proper to enforce state laws applicable to credit unions. The bill authorizes a credit union to disclose a report of examination or relevant portions of the report to another credit union proposing to merge or consolidate with the credit union or to a fidelity bond carrier if the recipient executes a written agreement not to disclose information in the report.

S.B. 244 authorizes a board to agree in writing to a conservatorship order to manage a credit union's affairs and to waive its right to appeal the order. The bill authorizes a conservatorship order to be served by mail if an officer or director is not available for service on the date personal service of the order is attempted, rather than if an officer or director is not available for service on the date of issuance. The bill specifies that service by mail is required to be certified or registered mail and requires that such mail be addressed to the home address of the chairman of the board as well as to the principal office of the credit union as shown by department records. The bill sets the deadline by which the board is authorized to file a written appeal of the conservatorship order with the commissioner as the 10th business day after the date the order is served and requires the appeal to state whether the board requests a hearing. The bill authorizes the commissioner to issue a liquidation order without first issuing a conservatorship order if the board consents to the liquidation order and waives the necessity of a conservatorship order. The bill clarifies that a majority of voting members of the credit union, but not less than a quorum, may vote to dissolve and liquidate the credit union.

S.B. 244 repeals Section 126.104, Finance Code.

**EFFECTIVE DATE**

September 1, 2013.