

By: Flynn

H.B. No. 1167

A BILL TO BE ENTITLED

AN ACT

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

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

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

Sec. 15.403. SUPERVISION AND REGULATION OF CREDIT UNIONS.

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

(b) To the extent necessary to the department's authority to supervise and regulate credit unions under this chapter and Subtitle D, Title 3, the commissioner may require each credit union to conduct business in compliance with federal laws that apply to credit unions.

SECTION 2. Section 15.409(d), Finance Code, is amended to read as follows:

(d) The department shall periodically notify the person filing the complaint and each person who is the subject of the complaint ~~[parties]~~ of the status of the complaint until final disposition.

SECTION 3. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4111 to read as follows:

1 Sec. 15.4111. REGULATORY COORDINATION. To ensure effective
2 coordination among and between the department and other state and
3 federal agencies, the commissioner and those agencies may enter
4 into cooperative, coordinating, or information-sharing agreements
5 that are necessary or proper to enforce the state or federal laws
6 applicable to credit unions.

7 SECTION 4. Section 122.008(c), Finance Code, is amended to
8 read as follows:

9 (c) Acceptance of a certificate of incorporation by the
10 credit union is conclusive evidence that the credit union is
11 authorized to do business under this subtitle.

12 SECTION 5. Section 122.012, Finance Code, is amended by
13 amending Subsection (b) and adding Subsection (d) to read as
14 follows:

15 (b) A credit union shall provide [~~After notifying~~] the
16 commissioner with written notice not later than the 30th day before
17 the date that the credit union establishes [~~in writing, a credit~~
18 ~~union may establish and maintain, at locations other than its~~
19 ~~principal place of business,~~] additional offices or service
20 facilities. A new office or service facility must be [~~that are~~]
21 reasonably necessary to provide services to the credit union's
22 members. The credit union shall additionally notify the
23 commissioner in writing not later than the 10th business day after
24 [~~of~~] the date that the new office or service facility begins
25 operating. For purposes of this subsection, an unmanned teller
26 machine is not considered a service facility.

27 (d) In accordance with rules adopted by the commission and

1 after notifying the commissioner in writing, a credit union may
2 close any office or service facility, provided that the credit
3 union designates and maintains an office as its principal place of
4 business in this state.

5 SECTION 6. Sections 122.013(a) and (c), Finance Code, are
6 amended to read as follows:

7 (a) A foreign credit union may do business in this state if
8 it is organized in a state or country that allows any [~~a~~] credit
9 union organized under this subtitle to do business in that state or
10 country.

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

14 (1) has failed to conduct its business in this state in
15 a manner consistent with the laws of this state [~~violated a rule~~
16 ~~adopted under this subtitle~~];

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

18 (3) refuses to comply with an order of the
19 commissioner [~~is engaged in a pattern of unsafe or unsound~~
20 ~~practices~~]; [~~or~~]

21 (4) refuses to comply with a request by the
22 commissioner to review the books and records of the credit union; or

23 (5) has not met or does not meet a [~~commission~~]
24 requirement imposed by commission rules.

25 SECTION 7. Subchapter A, Chapter 122, Finance Code, is
26 amended by adding Section 122.0131 to read as follows:

27 Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. If a

1 state contiguous to this state experiences an emergency, on a
2 request by that state's credit union regulatory agency, the
3 commissioner may authorize one or more credit unions located in
4 that state to open temporary offices in this state to more promptly
5 restore credit union services to their members. The commissioner
6 shall issue an order permitting the temporary office and specifying
7 the period the office may remain open. On a finding that the
8 conditions requiring the temporary office continue to exist, the
9 commissioner may extend the period the office may remain open. A
10 credit union may convert a temporary office authorized under this
11 section to a permanent location and operate as a foreign credit
12 union if it qualifies to do business in this state as a foreign
13 credit union under Section 122.013 and commission rules.

14 SECTION 8. Section 122.053(f), Finance Code, is amended to
15 read as follows:

16 (f) A director may not vote by proxy. A [~~If and to the extent~~
17 ~~provided in the bylaws, a~~] director may participate in and act at
18 any meeting of the board by means of electronic communications
19 equipment through which all persons participating in the meeting
20 can communicate with each other. Participation in a meeting in the
21 manner authorized by this subsection constitutes attendance at a
22 meeting.

23 SECTION 9. Sections 122.056(a) and (c), Finance Code, are
24 amended to read as follows:

25 (a) The board may appoint not more than six [~~three~~]
26 individuals to serve at the board's pleasure as honorary or
27 advisory directors to advise and consult with the board and

1 otherwise aid the board in carrying out the board's duties and
2 responsibilities.

3 (c) An honorary or advisory director may participate in any
4 board deliberation. Except as otherwise provided by Section
5 125.402(d), an honorary or advisory director shall hold in
6 confidence all information the director receives about a credit
7 union during the director's service.

8 SECTION 10. Section 122.060(a), Finance Code, is amended to
9 read as follows:

10 (a) A credit union shall submit to the commissioner, in a
11 form approved by the department, [The board chairman and the
12 secretary:

13 [~~(1) shall execute~~] a certificate of election that
14 provides [states] the name and address of each officer, director,
15 and committee member elected or appointed. The certificate must be
16 filed within the time prescribed by the commissioner[, and

17 [~~(2) not later than the 30th day after the date of the~~
18 ~~annual organizational meeting of election or appointment of any~~
19 ~~interim officer, director, or committee member, shall file a copy~~
20 ~~of the certificate of election with the department].~~

21 SECTION 11. Section 122.061, Finance Code, is amended by
22 amending Subsection (a) and adding Subsection (c) to read as
23 follows:

24 (a) While serving as a director, honorary director,
25 advisory director, committee member, officer, or employee of a
26 credit union, a person may not:

27 (1) participate, directly or indirectly, in the

1 deliberation on or determination of a question affecting the
2 person's pecuniary interest or the pecuniary interest of a member
3 of the person's immediate family or of a partnership, association,
4 or corporation, other than the credit union, in which the person is
5 directly or indirectly interested; or

6 (2) become employed by, engage in, or own an interest
7 in a business or professional activity that the person could
8 reasonably expect to:

9 (A) require or induce the person to disclose
10 confidential information acquired because of the person's office or
11 employment in the credit union; or

12 (B) impair the person's independence or judgment
13 in the performance of the person's duties or responsibilities to
14 the credit union.

15 (c) In this section, "member of a person's immediate family"
16 means a person's spouse or another person living in the person's
17 household.

18 SECTION 12. Section 122.064, Finance Code, is amended to
19 read as follows:

20 Sec. 122.064. INDEMNIFICATION. A credit union may elect to
21 indemnify a director, officer, employee, or agent of the credit
22 union [~~or another person~~] and to purchase insurance as if the credit
23 union were an "enterprise" as defined by Section 8.001, Business
24 Organizations Code, under and subject to the credit union's bylaws
25 and written policy. A credit union may not provide any
26 indemnification or insurance that would not be permissible under
27 Chapter 8, Business Organizations Code, but may elect to impose the

1 credit union's own limitations on indemnification[+]

2 [~~(1) by adopting the indemnification and insurance~~
3 ~~procedures of Section 2.22A, Texas Non-Profit Corporation Act~~
4 ~~(Article 1396-2.22A, Vernon's Texas Civil Statutes); or~~

5 [~~(2) in another manner determined by the board~~].

6 SECTION 13. Sections 122.101(a) and (b), Finance Code, are
7 amended to read as follows:

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

13 (b) The credit union must submit the call report on or
14 before the due date prescribed [~~stated on the form supplied~~] by the
15 department. If a credit union does not submit a report by the due
16 date, the commissioner shall charge a late fee in an amount set by
17 the commission for each day the report remains unfiled. The
18 commissioner for good cause shown may waive all or part of the late
19 fee.

20 SECTION 14. Section 122.201, Finance Code, is amended to
21 read as follows:

22 Sec. 122.201. CONVERSION OF STATE CREDIT UNION TO FEDERAL
23 CREDIT UNION. (a) A credit union organized under the laws of this
24 state may convert to a credit union under the laws of the United
25 States:

26 (1) on an affirmative vote by a majority of the members
27 voting at a meeting called for that purpose; and

1 (2) by complying with any rule adopted by the
2 commission to facilitate the conversion.

3 (b) On the issuance of a charter by the National Credit
4 Union Administration, the credit union:

5 (1) ceases to be a credit union incorporated under
6 this subtitle; and

7 (2) is no longer subject to the supervision and
8 regulation of the commissioner and department.

9 (c) The converted credit union shall file with the
10 commissioner a copy of the charter issued to the credit union by the
11 National Credit Union Administration. Failure to file the required
12 copy of the charter does not affect the validity of the conversion.

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

15 Sec. 123.106. CHANGE OF LOCATION. (a) A credit union
16 changing the location of [~~may change~~] its principal place of
17 business or any additional office or service facility shall notify
18 [~~a subsidiary place of business to another location by notifying~~]
19 the commissioner in writing of the new location [~~address~~] and the
20 scheduled or effective date of the change.

21 (b) The credit union must submit notice to the commissioner
22 not later than the 30th day before the scheduled or effective date
23 of the change. The commissioner may waive or reduce the timing of
24 the notice requirement under this subsection.

25 SECTION 16. Section 124.002, Finance Code, is amended to
26 read as follows:

27 Sec. 124.002. LIMITATIONS ON INTEREST RATES. The interest

1 rate on a loan to a member may not exceed:

2 (1) 1-1/2 percent per month on the unpaid balance;
3 [~~or~~]

4 (2) 28 percent a year to the extent that federal credit
5 unions are permitted to charge that rate; or

6 (3) a higher rate authorized by law, including a rate
7 authorized by Chapter 303.

8 SECTION 17. Section 125.402, Finance Code, is amended by
9 amending Subsection (c) and adding Subsection (d) to read as
10 follows:

11 (c) The commission may adopt reasonable rules relating to
12 the:

13 (1) permissible disclosure of nonpublic personal
14 information about [~~confidentiality of~~] the accounts of credit union
15 members; and

16 (2) duties of the credit union to maintain [~~that~~]
17 confidentiality of member accounts.

18 (d) The directors, officers, committee members, and
19 employees and any honorary or advisory directors of a credit union
20 shall hold in confidence all information regarding transactions of
21 the credit union, including information concerning transactions
22 with the credit union's members and the members' personal affairs,
23 except to the extent necessary in connection with making,
24 extending, or collecting a loan or extension of credit, or as
25 otherwise authorized by this section, commission rules adopted
26 under Subsection (c), or other applicable law.

27 SECTION 18. Sections 126.002(c) and (e), Finance Code, are

1 amended to read as follows:

2 (c) The commissioner may disclose the information described
3 by Subsection (a) to a law enforcement agency, a share insuring
4 organization, or another department, agency, or instrumentality of
5 this state, another state, or the United States if the commissioner
6 determines that disclosure is necessary or proper to enforce the
7 laws of this state applicable to credit unions.

8 (e) Confidential information that is provided by the
9 department to a credit union, organization, or service provider of
10 a credit union, whether in the form of a report of examination or
11 otherwise, is the confidential property of the department. The
12 recipient or an officer, director, employee, or agent of the
13 recipient may not make the information public and may not disclose
14 the information to a person not officially connected to the
15 recipient as an officer, director, employee, attorney, auditor, or
16 independent auditor, except as authorized by rules adopted under
17 this subtitle. A credit union may disclose a report of examination
18 or relevant portions of the report to another credit union
19 proposing to merge or consolidate with the credit union or to a
20 fidelity bond carrier if the recipient executes a written agreement
21 not to disclose information in the report.

22 SECTION 19. Section 126.101, Finance Code, is amended by
23 adding Subsection (c) to read as follows:

24 (c) The board may:

25 (1) agree in writing to a conservatorship order; and

26 (2) waive its right to appeal the order under Section

27 126.105.

1 SECTION 20. Sections 126.102(b) and (c), Finance Code, are
2 amended to read as follows:

3 (b) Service may be by mail if an officer or director is not
4 available for service on the date the order is to be personally
5 served [~~of issuance~~].

6 (c) Service by [~~certified or registered~~] mail[+]

7 [(1)] must be by certified or registered mail, must be
8 addressed to the credit union at the address shown for its principal
9 office by department records and to the home address of the chairman
10 of the board, [+] and

11 [(2)] is complete on deposit of the order in a
12 postpaid, properly addressed wrapper, in a post office or official
13 depository under the care and custody of the United States Postal
14 Service.

15 SECTION 21. Sections 126.105(a) and (b), Finance Code, are
16 amended to read as follows:

17 (a) Unless the board waives its right to appeal under
18 Section 126.101(c), the [The] board may file a written appeal of the
19 conservatorship order with the commissioner not later than the 10th
20 business day after the date the order is served as provided by
21 Section 126.102. The appeal must include a certified copy of the
22 board resolution and must state whether the board requests a
23 hearing.

24 (b) If the board requests [~~files an appeal to request~~] a
25 hearing [~~before the commission~~], the commissioner shall promptly
26 request from the State Office of Administrative Hearings a hearing
27 date that is not earlier than the 11th day nor later than the 30th

1 day after the date on which the commissioner receives the appeal [~~is~~
2 ~~received~~].

3 SECTION 22. Section 126.106, Finance Code, is amended to
4 read as follows:

5 Sec. 126.106. FAILURE TO APPEAL [~~FILE REPLY~~] OR APPEAR
6 [~~REQUEST HEARING~~]. [~~(a)~~] If the board does not appeal [~~file a~~
7 ~~reply to~~] the conservatorship order or fails to [~~as required by~~
8 ~~Section 126.104 or fails to request and~~] appear at the hearing
9 provided for by Section 126.105, the credit union is presumed to
10 have consented to the commissioner's disposition action, and the
11 commissioner may dispose of the conservatorship matter as the
12 commissioner considers appropriate.

13 [~~(b) The credit union is presumed to have consented to the~~
14 ~~commissioner's disposition action and may not contest it.~~]

15 SECTION 23. Section 126.201, Finance Code, is amended to
16 read as follows:

17 Sec. 126.201. LIQUIDATION ORDER; APPOINTMENT OF
18 LIQUIDATING AGENT. (a) After the commissioner has issued a
19 conservatorship order and provided an opportunity for hearing, the
20 commissioner by liquidation order may appoint a liquidating agent
21 and direct that the credit union be liquidated if:

22 (1) the board requests issuance of a liquidation order
23 and liquidation of the credit union;

24 (2) the credit union otherwise consents to the
25 liquidation; or

26 (3) the commissioner:

27 (A) finds that the closing of the credit union

1 and the liquidation of the credit union's assets are in the public
2 interest and the best interest of the credit union's members,
3 depositors, and creditors; and

4 (B) determines that the credit union is not in a
5 condition to continue business and cannot be rehabilitated as
6 provided by this chapter.

7 (b) If the board consents to the liquidation order and
8 waives the necessity of a conservatorship order, the commissioner
9 may issue a liquidation order without first issuing a
10 conservatorship order.

11 SECTION 24. Section 126.455, Finance Code, is amended to
12 read as follows:

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

20 SECTION 25. Section 126.104, Finance Code, is repealed.

21 SECTION 26. This Act takes effect September 1, 2013.