

1-1 By: Carona S.B. No. 244
 1-2 (In the Senate - Filed January 23, 2013; January 29, 2013,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 February 13, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0;
 1-6 February 13, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 244 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the administration, operation, supervision, and
 1-22 regulation of credit unions.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 15.403, Finance Code, is amended to read
 1-25 as follows:

1-26 Sec. 15.403. SUPERVISION AND REGULATION OF CREDIT UNIONS.

1-27 (a) The commissioner shall supervise and regulate a credit union
 1-28 doing business in this state, other than a federal credit union, in
 1-29 accordance with this chapter and Subtitle D, Title 3, including
 1-30 rules adopted under this chapter and Subtitle D, Title 3.

1-31 (b) To the extent necessary to the department's authority to
 1-32 supervise and regulate credit unions under this chapter and
 1-33 Subtitle D, Title 3, the commissioner may require each credit union
 1-34 to conduct business in compliance with federal laws that apply to
 1-35 credit unions.

1-36 SECTION 2. Subsection (d), Section 15.409, Finance Code, is
 1-37 amended to read as follows:

1-38 (d) The department shall periodically notify the person
 1-39 filing the complaint and each person who is the subject of the
 1-40 complaint [~~parties~~] of the status of the complaint until final
 1-41 disposition.

1-42 SECTION 3. Subchapter E, Chapter 15, Finance Code, is
 1-43 amended by adding Section 15.4111 to read as follows:

1-44 Sec. 15.4111. REGULATORY COORDINATION. To ensure effective
 1-45 coordination among and between the department and other state and
 1-46 federal agencies, the commissioner and those agencies may enter
 1-47 into cooperative, coordinating, or information-sharing agreements
 1-48 that are necessary or proper to enforce the state or federal laws
 1-49 applicable to credit unions.

1-50 SECTION 4. Subsection (c), Section 122.008, Finance Code,
 1-51 is amended to read as follows:

1-52 (c) Acceptance of a certificate of incorporation by the
 1-53 credit union is conclusive evidence that the credit union is
 1-54 authorized to do business under this subtitle.

1-55 SECTION 5. Section 122.012, Finance Code, is amended by
 1-56 amending Subsection (b) and adding Subsection (d) to read as
 1-57 follows:

1-58 (b) A credit union shall provide [~~After notifying~~] the
 1-59 commissioner with written notice not later than the 30th day before
 1-60 the date that the credit union establishes [~~in writing, a credit~~

2-1 ~~union may establish and maintain, at locations other than its~~
 2-2 ~~principal place of business,] additional offices or service~~
 2-3 ~~facilities. A new office or service facility must be [that are]~~
 2-4 ~~reasonably necessary to provide services to the credit union's~~
 2-5 ~~members. The credit union shall additionally notify the~~
 2-6 ~~commissioner in writing not later than the 10th business day after~~
 2-7 ~~[of] the date that the new office or service facility begins~~
 2-8 ~~operating. For purposes of this subsection, an unmanned teller~~
 2-9 ~~machine is not considered a service facility.~~

2-10 (d) In accordance with rules adopted by the commission and
 2-11 after notifying the commissioner in writing, a credit union may
 2-12 close any office or service facility, provided that the credit
 2-13 union designates and maintains an office as its principal place of
 2-14 business in this state.

2-15 SECTION 6. Subsections (a) and (c), Section 122.013,
 2-16 Finance Code, are amended to read as follows:

2-17 (a) A foreign credit union may do business in this state if
 2-18 it is organized in a state or country that allows any ~~a~~ credit
 2-19 union organized under this subtitle to do business in that state or
 2-20 country.

2-21 (c) The commissioner may suspend or revoke a foreign credit
 2-22 union's authority to do business in this state if the commissioner
 2-23 finds that the foreign credit union:

2-24 (1) has failed to conduct its business in this state in
 2-25 a manner consistent with the laws of this state ~~[violated a rule~~
 2-26 ~~adopted under this subtitle];~~

2-27 (2) is in an unsafe or unsound condition;

2-28 (3) refuses to comply with an order of the
 2-29 commissioner ~~[is engaged in a pattern of unsafe or unsound~~
 2-30 ~~practices];~~ ~~[or]~~

2-31 (4) refuses to comply with a request by the
 2-32 commissioner to review the books and records of the credit union; or

2-33 (5) has not met or does not meet a ~~[commissioner]~~
 2-34 requirement imposed by commission rules.

2-35 SECTION 7. Subchapter A, Chapter 122, Finance Code, is
 2-36 amended by adding Section 122.0131 to read as follows:

2-37 Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. If a
 2-38 state contiguous to this state experiences an emergency, on a
 2-39 request by that state's credit union regulatory agency, the
 2-40 commissioner may authorize one or more credit unions located in
 2-41 that state to open temporary offices in this state to more promptly
 2-42 restore credit union services to their members. The commissioner
 2-43 shall issue an order permitting the temporary office and specifying
 2-44 the period the office may remain open. On a finding that the
 2-45 conditions requiring the temporary office continue to exist, the
 2-46 commissioner may extend the period the office may remain open. A
 2-47 credit union may convert a temporary office authorized under this
 2-48 section to a permanent location and operate as a foreign credit
 2-49 union if it qualifies to do business in this state as a foreign
 2-50 credit union under Section 122.013 and commission rules.

2-51 SECTION 8. Subsection (f), Section 122.053, Finance Code,
 2-52 is amended to read as follows:

2-53 (f) A director may not vote by proxy. A ~~[If and to the~~
 2-54 ~~extent provided in the bylaws, a] director may participate in and~~
 2-55 ~~act at any meeting of the board by means of electronic~~
 2-56 ~~communications equipment through which all persons participating~~
 2-57 ~~in the meeting can communicate with each other. Participation in a~~
 2-58 ~~meeting in the manner authorized by this subsection constitutes~~
 2-59 ~~attendance at a meeting.~~

2-60 SECTION 9. Subsections (a) and (c), Section 122.056,
 2-61 Finance Code, are amended to read as follows:

2-62 (a) The board may appoint not more than six ~~[three]~~
 2-63 individuals to serve at the board's pleasure as honorary or
 2-64 advisory directors to advise and consult with the board and
 2-65 otherwise aid the board in carrying out the board's duties and
 2-66 responsibilities.

2-67 (c) An honorary or advisory director may participate in any
 2-68 board deliberation. Except as otherwise provided by Section
 2-69 125.402(d), an honorary or advisory director shall hold in

3-1 confidence all information the director receives about a credit
 3-2 union during the director's service.

3-3 SECTION 10. Subsection (a), Section 122.060, Finance Code,
 3-4 is amended to read as follows:

3-5 (a) A credit union shall submit to the commissioner, in a
 3-6 form approved by the department, ~~[The board chairman and the~~
 3-7 secretary:

3-8 ~~[(1) shall execute]~~ a certificate of election that
 3-9 provides ~~[states]~~ the name and address of each officer, director,
 3-10 and committee member elected or appointed. The certificate must be
 3-11 filed within the time prescribed by the commissioner ~~[, and~~

3-12 ~~[(2) not later than the 30th day after the date of the~~
 3-13 ~~annual organizational meeting of election or appointment of any~~
 3-14 ~~interim officer, director, or committee member, shall file a copy~~
 3-15 ~~of the certificate of election with the department].~~

3-16 SECTION 11. Section 122.061, Finance Code, is amended by
 3-17 amending Subsection (a) and adding Subsection (c) to read as
 3-18 follows:

3-19 (a) While serving as a director, honorary director,
 3-20 advisory director, committee member, officer, or employee of a
 3-21 credit union, a person may not:

3-22 (1) participate, directly or indirectly, in the
 3-23 deliberation on or determination of a question affecting the
 3-24 person's pecuniary interest or the pecuniary interest of a member
 3-25 of the person's immediate family or of a partnership, association,
 3-26 or corporation, other than the credit union, in which the person is
 3-27 directly or indirectly interested; or

3-28 (2) become employed by, engage in, or own an interest
 3-29 in a business or professional activity that the person could
 3-30 reasonably expect to:

3-31 (A) require or induce the person to disclose
 3-32 confidential information acquired because of the person's office or
 3-33 employment in the credit union; or

3-34 (B) impair the person's independence or judgment
 3-35 in the performance of the person's duties or responsibilities to
 3-36 the credit union.

3-37 (c) In this section, "member of a person's immediate family"
 3-38 means a person's spouse or another person living in the person's
 3-39 household.

3-40 SECTION 12. Section 122.064, Finance Code, is amended to
 3-41 read as follows:

3-42 Sec. 122.064. INDEMNIFICATION. A credit union may elect to
 3-43 indemnify a director, officer, employee, or agent of the credit
 3-44 union ~~[or another person]~~ and to purchase insurance as if the credit
 3-45 union were an "enterprise" as defined by Section 8.001, Business
 3-46 Organizations Code, under and subject to the credit union's bylaws
 3-47 and written policy. A credit union may not provide any
 3-48 indemnification or insurance that would not be permissible under
 3-49 Chapter 8, Business Organizations Code, but may elect to impose the
 3-50 credit union's own limitations on indemnification ~~[,~~

3-51 ~~[(1) by adopting the indemnification and insurance~~
 3-52 ~~procedures of Section 2.22A, Texas Non-Profit Corporation Act~~
 3-53 ~~(Article 1396-2.22A, Vernon's Texas Civil Statutes); or~~

3-54 ~~[(2) in another manner determined by the board].~~

3-55 SECTION 13. Subsections (a) and (b), Section 122.101,
 3-56 Finance Code, are amended to read as follows:

3-57 (a) A credit union shall prepare ~~[submit to the department~~
 3-58 ~~on]~~ a quarterly ~~[basis a]~~ call report, in a manner approved ~~[on a~~
 3-59 ~~form supplied]~~ by the department, that states the credit union's
 3-60 financial condition. The commissioner may require a credit union
 3-61 to file additional financial reports.

3-62 (b) The credit union must submit the call report on or
 3-63 before the due date prescribed ~~[stated on the form supplied]~~ by the
 3-64 department. If a credit union does not submit a report by the due
 3-65 date, the commissioner shall charge a late fee in an amount set by
 3-66 the commission for each day the report remains unfiled. The
 3-67 commissioner for good cause shown may waive all or part of the late
 3-68 fee.

3-69 SECTION 14. Section 122.201, Finance Code, is amended to

4-1 read as follows:

4-2 Sec. 122.201. CONVERSION OF STATE CREDIT UNION TO FEDERAL
4-3 CREDIT UNION. (a) A credit union organized under the laws of this
4-4 state may convert to a credit union under the laws of the United
4-5 States:

4-6 (1) on an affirmative vote by a majority of the members
4-7 voting at a meeting called for that purpose; and

4-8 (2) by complying with any rule adopted by the
4-9 commission to facilitate the conversion.

4-10 (b) On the issuance of a charter by the National Credit
4-11 Union Administration, the credit union:

4-12 (1) ceases to be a credit union incorporated under
4-13 this subtitle; and

4-14 (2) is no longer subject to the supervision and
4-15 regulation of the commissioner and department.

4-16 (c) The converted credit union shall file with the
4-17 commissioner a copy of the charter issued to the credit union by the
4-18 National Credit Union Administration. Failure to file the required
4-19 copy of the charter does not affect the validity of the conversion.

4-20 SECTION 15. Section 123.106, Finance Code, is amended to
4-21 read as follows:

4-22 Sec. 123.106. CHANGE OF LOCATION. (a) A credit union
4-23 changing the location of [may change] its principal place of
4-24 business or any additional office or service facility shall notify
4-25 [a subsidiary place of business to another location by notifying]
4-26 the commissioner in writing of the new location [address] and the
4-27 scheduled or effective date of the change.

4-28 (b) The credit union must submit notice to the commissioner
4-29 not later than the 30th day before the scheduled or effective date
4-30 of the change. The commissioner may waive or reduce the timing of
4-31 the notice requirement under this subsection.

4-32 SECTION 16. Section 124.002, Finance Code, is amended to
4-33 read as follows:

4-34 Sec. 124.002. LIMITATIONS ON INTEREST RATES. The interest
4-35 rate on a loan to a member may not exceed:

4-36 (1) 1-1/2 percent per month on the unpaid balance;
4-37 [~~or~~]

4-38 (2) 28 percent a year to the extent that federal credit
4-39 unions are permitted to charge that rate; or

4-40 (3) a higher rate authorized by law, including a rate
4-41 authorized by Chapter 303.

4-42 SECTION 17. Section 125.402, Finance Code, is amended by
4-43 amending Subsection (c) and adding Subsection (d) to read as
4-44 follows:

4-45 (c) The commission may adopt reasonable rules relating to
4-46 the:

4-47 (1) permissible disclosure of nonpublic personal
4-48 information about [confidentiality of] the accounts of credit union
4-49 members; and

4-50 (2) duties of the credit union to maintain [that]
4-51 confidentiality of member accounts.

4-52 (d) The directors, officers, committee members, and
4-53 employees and any honorary or advisory directors of a credit union
4-54 shall hold in confidence all information regarding transactions of
4-55 the credit union, including information concerning transactions
4-56 with the credit union's members and the members' personal affairs,
4-57 except to the extent necessary in connection with making,
4-58 extending, or collecting a loan or extension of credit, or as
4-59 otherwise authorized by this section, commission rules adopted
4-60 under Subsection (c), or other applicable law.

4-61 SECTION 18. Subsections (c) and (e), Section 126.002,
4-62 Finance Code, are amended to read as follows:

4-63 (c) The commissioner may disclose the information described
4-64 by Subsection (a) to a law enforcement agency, a share insuring
4-65 organization, or another department, agency, or instrumentality of
4-66 this state, another state, or the United States if the commissioner
4-67 determines that disclosure is necessary or proper to enforce the
4-68 laws of this state applicable to credit unions.

4-69 (e) Confidential information that is provided by the

5-1 department to a credit union, organization, or service provider of
 5-2 a credit union, whether in the form of a report of examination or
 5-3 otherwise, is the confidential property of the department. The
 5-4 recipient or an officer, director, employee, or agent of the
 5-5 recipient may not make the information public and may not disclose
 5-6 the information to a person not officially connected to the
 5-7 recipient as an officer, director, employee, attorney, auditor, or
 5-8 independent auditor, except as authorized by rules adopted under
 5-9 this subtitle. A credit union may disclose a report of examination
 5-10 or relevant portions of the report to another credit union
 5-11 proposing to merge or consolidate with the credit union or to a
 5-12 fidelity bond carrier if the recipient executes a written agreement
 5-13 not to disclose information in the report.

5-14 SECTION 19. Section 126.101, Finance Code, is amended by
 5-15 adding Subsection (c) to read as follows:

5-16 (c) The board may:

- 5-17 (1) agree in writing to a conservatorship order; and
 5-18 (2) waive its right to appeal the order under Section
 5-19 126.105.

5-20 SECTION 20. Subsections (b) and (c), Section 126.102,
 5-21 Finance Code, are amended to read as follows:

5-22 (b) Service may be by mail if an officer or director is not
 5-23 available for service on the date personal service of the order is
 5-24 attempted [of issuance].

5-25 (c) Service by ~~[certified or registered]~~ mail~~+~~

5-26 ~~[(1)]~~ must be by certified or registered mail, must be
 5-27 addressed to the credit union at the address shown for its principal
 5-28 office by department records and to the home address of the chairman
 5-29 of the board, [+] and

5-30 ~~[(2)]~~ is complete on deposit of the order in a
 5-31 postpaid, properly addressed wrapper, in a post office or official
 5-32 depository under the care and custody of the United States Postal
 5-33 Service.

5-34 SECTION 21. Subsections (a) and (b), Section 126.105,
 5-35 Finance Code, are amended to read as follows:

5-36 (a) Unless the board waives its right to appeal under
 5-37 Section 126.101(c), the [The] board may file a written appeal of the
 5-38 conservatorship order with the commissioner not later than the 10th
 5-39 business day after the date the order is served as provided by
 5-40 Section 126.102. The appeal must include a certified copy of the
 5-41 board resolution and must state whether the board requests a
 5-42 hearing.

5-43 (b) If the board requests ~~[files an appeal to request]~~ a
 5-44 hearing ~~[before the commission]~~, the commissioner shall promptly
 5-45 request from the State Office of Administrative Hearings a hearing
 5-46 date that is not earlier than the 11th day nor later than the 30th
 5-47 day after the date on which the commissioner receives the appeal [is
 5-48 received].

5-49 SECTION 22. Section 126.106, Finance Code, is amended to
 5-50 read as follows:

5-51 Sec. 126.106. FAILURE TO APPEAL ~~[FILE REPLY]~~ OR APPEAR
 5-52 [REQUEST HEARING]. ~~[(a)]~~ If the board does not appeal [file a
 5-53 reply to] the conservatorship order or fails to [as required by
 5-54 Section 126.104 or fails to request and] appear at the hearing
 5-55 provided for by Section 126.105, the credit union is presumed to
 5-56 have consented to the commissioner's disposition action, and the
 5-57 commissioner may dispose of the conservatorship matter as the
 5-58 commissioner considers appropriate.

5-59 ~~[(b) The credit union is presumed to have consented to the~~
 5-60 ~~commissioner's disposition action and may not contest it.]~~

5-61 SECTION 23. Section 126.201, Finance Code, is amended to
 5-62 read as follows:

5-63 Sec. 126.201. LIQUIDATION ORDER; APPOINTMENT OF
 5-64 LIQUIDATING AGENT. (a) After the commissioner has issued a
 5-65 conservatorship order and provided an opportunity for hearing, the
 5-66 commissioner by liquidation order may appoint a liquidating agent
 5-67 and direct that the credit union be liquidated if:

- 5-68 (1) the board requests issuance of a liquidation order
 5-69 and liquidation of the credit union;

6-1 (2) the credit union otherwise consents to the
6-2 liquidation; or

6-3 (3) the commissioner:

6-4 (A) finds that the closing of the credit union
6-5 and the liquidation of the credit union's assets are in the public
6-6 interest and the best interest of the credit union's members,
6-7 depositors, and creditors; and

6-8 (B) determines that the credit union is not in a
6-9 condition to continue business and cannot be rehabilitated as
6-10 provided by this chapter.

6-11 (b) If the board consents to the liquidation order and
6-12 waives the necessity of a conservatorship order, the commissioner
6-13 may issue a liquidation order without first issuing a
6-14 conservatorship order.

6-15 SECTION 24. Section 126.455, Finance Code, is amended to
6-16 read as follows:

6-17 Sec. 126.455. VOTE ON VOLUNTARY LIQUIDATION. At a special
6-18 meeting called to consider the proposed liquidation, a majority of
6-19 the credit union members voting, but not less than a quorum, may
6-20 vote to dissolve and liquidate the credit union. Those members
6-21 casting votes by mail or at the meeting constitute a quorum for the
6-22 transaction of business at the special meeting, notwithstanding a
6-23 bylaw provision to the contrary.

6-24 SECTION 25. Section 126.104, Finance Code, is repealed.

6-25 SECTION 26. This Act takes effect September 1, 2013.

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