

CHAPTER 533

H.B. No. 1208

AN ACT

relating to the regulation of credit unions.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2.02, Texas Credit Union Act (Article 2461-2.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. ARTICLES OF INCORPORATION. The articles of incorporation shall set forth:

- (1) the name of the proposed credit union;
- (2) the town or city and county where the proposed credit union will have its principal place of business;
- (3) the term of existence of the credit union, which shall be perpetual;
- (4) the fiscal year of the credit union, which must be the calendar year;
- (5) the initial share accounts of the credit union;
- (6) the name and address of each incorporator and the number of shares subscribed by each;
- (7) the number of directors constituting the initial board of directors and the names and addresses of the persons who will serve as directors until the first annual meeting or until their successors are duly elected and qualified; and
- (8) a description of the definable community of interest shared by the members of the credit union *at the time of incorporation*.

SECTION 2. Section 2.09, Texas Credit Union Act (Article 2461-2.09, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.09. REPORTS. On or before February 1 of each year, each credit union authorized to do business under this Act shall report to the department on a form supplied by the department for this purpose. On filing the report, a credit union shall pay to the commissioner *any* [the] required filing fee. The commission *may* [shall] set a reasonable fee for processing a report. The commissioner may require a credit union to file additional reports. If a credit union does not file a report or pay the filing fee before the 16th day after the day it is due, the commissioner shall charge a late fee in an amount set by the commission for each day that the report or fee is in arrears, except the commissioner may waive payment of all or part of the late fee for good cause shown. Failure of a credit union to file a report before the 31st day after the date it is due constitutes grounds for imposing the sanctions provided by Chapters 5 and 10 of this Act.

SECTION 3. Section 3.01(a), Texas Credit Union Act (Article 2461-3.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Membership in a credit union is limited to the incorporators and other persons, including incorporated and unincorporated organizations, who:

(1) share a definable community of interest, in accordance with the articles of incorporation *or bylaws* of the credit union, including a community of interest based on occupation, association, or residence;

(2) have paid an entrance fee or membership fee, or both, as required by the bylaws;

(3) have complied with the minimum share, including membership share, requirements and other qualifying account requirements established by the board of directors; and

(4) have complied with any other requirements contained in the articles of incorporation and bylaws.

SECTION 4. Section 4.01(a), Texas Credit Union Act (Article 2461-4.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A credit union may exercise all powers necessary or appropriate to accomplish the purposes for which it is organized and all powers granted corporations authorized to do business in this state. These powers include, but are not limited to, the power to:

- (1) make contracts;
- (2) sue and be sued in the name of the credit union;
- (3) adopt and use a common seal and alter its seal at pleasure;
- (4) purchase, hold, lease, or dispose of property necessary or incidental to its operations or purposes, subject to rules issued by the commission;
- (5) receive payments on shares and deposits and to provide for the transfer and withdrawal of funds from accounts by the means and through the payment systems that the board of directors determines best serve the convenience and needs of members and depositors;
- (6) develop and offer to its members and depositors, in accordance with rules adopted by the commission, investment programs and in connection with those programs issue and sell securities;
- (7) act as agent for its members and depositors, in accordance with rules adopted by the commission, in the purchase, sale, or other disposition of securities, interests in mutual funds, and interests or participations in any other type of investment;
- (8) act as agent or depository of the United States, any agent or instrumentality of the United States, this or any other state, or any city, town, village, county, school district, municipal corporation, political subdivision, or taxing authority of this or any other state, accept for deposit the funds of such an entity, or both;
- (9) lend its funds in accordance with applicable law;
- (10) purchase or otherwise provide insurance for the benefit or convenience of its members;
- (11) borrow money from any source, but if, after incurring a debt, the total debt of the credit union will exceed an amount equal to 25 percent of its shares, deposits, and surplus, the debt may not be incurred without the prior approval of the commissioner, and the commissioner shall grant or deny a request for approval under this subdivision within 10 days after it is made;
- (12) act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, *receive investments from a person acting in such a capacity under the Texas Probate Code or Subtitle B, Title 9, Property Code, and act [and] as depository for any money paid into court and for any money constituting the estates of deceased persons, minors, or incompetents;*
- (13) accept, [and] execute, *and administer as trustee* any trust and accept funds or money for deposit by fiduciaries, trustees, [or] receivers, *guardians, executors, or administrators;*
- (14) accept funds for deposit by savings and loan associations, savings associations, savings departments of banks, commercial banks, savings banks, trust companies, insurance companies, or any intermediary or other person managing or holding funds on behalf of the credit union or any of its members or depositors;
- (15) act as custodian or trustee of individual retirement accounts, pension funds of self-employed individuals or of the sponsor of a credit union, or as custodian or trustee under any other pension or profit-sharing plan;

(16) hold membership in other credit unions organized under this Act or other laws and hold membership in other organizations as may be approved by the board of directors;

(17) declare and pay dividends on shares, contract for and pay interest on deposits, and pay interest refunds to borrowers;

(18) change its principal place of business to another place in the state, or change the location in the state of any subsidiary places of business, on giving written notice to the commissioner;

(19) collect, receive, and disburse money in connection with the sale of travelers checks, money orders, cashier's checks or drafts, treasurer's drafts, similar instruments, and securities of all types, and for other purposes that may provide benefit or convenience for its members, and for these services, levy and collect charges;

(20) levy and collect fees and charges determined by the board of directors for other services and administrative costs including, but not limited to, a charge for a check or draft that is returned because it is drawn against a closed account or an account containing insufficient or uncollected funds, because of a stop payment order, or because of another similar reason; these charges are in addition to interest authorized by law and are not a part of interest collected or agreed to be paid on a loan, but are expenses of administration;

(21) establish, operate, or participate in systems that allow the transfer of credit union funds or the shares or deposits of members by electronic or other means, including but not limited to clearinghouse associations, data processing and other electronic networks, the Federal Reserve System, or any other government payment or liquidity programs;

(22) make donations or contributions to any nonprofit, civic, charitable, or community organization as authorized by the board of directors;

(23) operate as a central credit union, with the approval of the commissioner;

(24) cause any or all records kept by the credit union to be copied by any means and dispose of the original record; and

(25) act as fiscal agent or transfer agent, receive and disburse money, transfer registered and countersigned certificates of stock, bonds, or other evidences of indebtedness, and guarantee signatures.

SECTION 5. Section 5.03, Texas Credit Union Act (Article 2461–5.03, Vernon's Texas Civil Statutes), is amended by adding Subsections (f) and (g) to read as follows:

(f) Unless otherwise provided by the bylaws, a vacancy occurring in the board of directors shall be filled by the affirmative vote of the majority of the remaining directors even if the remaining directors do not constitute a quorum of the board of directors. A director elected by the board of directors to fill a vacancy holds office only until the next annual membership meeting, at which the position shall be filled for the remainder of the unexpired term by vote of the members.

(g) A director may be removed from office according to the procedure for removal provided by the bylaws.

SECTION 6. Section 6.01(a), Texas Credit Union Act (Article 2461–6.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The capital of a credit union consists of the aggregate amount of the share [and deposit] accounts of its members plus all reserves and undivided earnings of the credit union.

SECTION 7. Section 6.06, Texas Credit Union Act (Article 2461–6.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.06. MINOR ACCOUNTS. (a) A credit union may issue share and deposit accounts in the name of a minor, receive payments on these accounts by or for the minor, pay withdrawals, accept pledges to the credit union by or for the minor, and act in any other matter with respect to the accounts on the order of the minor. A minor may vote in the meetings of the members if permitted by the bylaws, except no minor may vote

through his parent or guardian. No minor is eligible for any office or committee membership within the credit union unless the bylaws specify otherwise.

(b) A payment or delivery of rights by a credit union, *including a federal credit union*, to a minor, any party to the account, or to the parent or guardian of a deceased minor, is a valid and sufficient release and discharge of the credit union to the extent of the payment or delivery. The payment and any receipt, pledge, or other action required by the credit union is binding on the minor as if the minor were of legal age and capacity.

SECTION 8. Section 7.02, Texas Credit Union Act (Article 2461-7.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.02. **LOAN LIMIT.** No credit union may make a loan or aggregate of loans to any one member, including loans to the member's business interests, in an amount greater than 10 percent of the credit union's total assets *or a lesser amount established by commission rule.*

SECTION 9. Section 9.02, Texas Credit Union Act (Article 2461-9.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.02. **DIVIDENDS AND INTEREST.** Dividends and interest may be paid at rates and on conditions that the board of directors authorizes. The commissioner may impose restrictions on the payment of dividends if he issues a cease and desist order under Chapter 5 of this Act *or as necessary to protect the member's interests and preserve solvency of the credit union as authorized by commission rule.*

SECTION 10. Sections 10.01(b), (c), (d), (g), (k), and (l), Texas Credit Union Act (Article 2461-10.01, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) If the commissioner makes any of these findings, he may issue an order temporarily suspending the credit union's operations for not more than 90 days *or, if the commissioner determines that the findings are of such severity that immediate affirmative action is needed to prevent further dissipation of the assets of the credit union, the commissioner may immediately issue an order of conservation and appoint a conservator to manage the affairs of the credit union.* Service of the order of suspension *or the order of conservation* must be by certified or registered mail, addressed to the credit union at the last address of its principal office, as shown by the records of the department, or by delivery to an officer or director of the credit union. Service by mail is complete on deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. The order must *clearly* state the grounds for suspension or conservation [~~with reasonable certainty~~].

(c) After a [~~the~~] suspension order has been served on the credit union, the commissioner shall take possession and control of the books, records, property, assets, and business of the credit union, and the credit union shall cease all operations, except those authorized by the commissioner and conducted under his supervision. Not later than 15 days after the date *an* [~~the~~] order of suspension *or conservation* is served, the board of directors shall file a written reply to the order, and may file a written request for a hearing to present to the commissioner a plan to continue operations *under the control of the board of directors* setting out proposed corrective actions. *If under an order of suspension, the* [~~The~~] board of directors may request that a conservator be appointed for the credit union or that the credit union be closed and a liquidating agent be appointed *and waive rights to further appeal*, in which event the commissioner may immediately appoint a conservator, or order that the credit union be liquidated and appoint a liquidating agent. *If under an order of conservation, the board of directors may consent to the conservatorship and waive rights to further appeals.*

(d) If the board of directors files its reply and requests a hearing as provided by Subsection (c) [~~this section~~], the commissioner shall set and hold the hearing not less than 10 *nor* [~~or~~] more than 30 days after the date of receipt of such a request. The commissioner shall promptly give notice to the credit union of the date, time, and place of the hearing. Not later than 10 days after the earlier of the date of conclusion of the hearing or the date on which the suspension expires, the commissioner shall adopt the plan to continue operations *under the control of the board of directors* presented by the

credit union, agree with the credit union on an alternative plan to continue operations *under the control of the board of directors* or other appropriate measures, reject the plan to continue operations *under the control of the board of directors* and issue an order of conservation appointing a conservator, *continue a previous order of conservation*, or issue an order of liquidation ordering that the credit union be closed, ordering that its affairs and business be liquidated, and appointing a liquidating agent.

(g) The commissioner shall determine the cost incident to the *conservatorship* [~~conservator's service~~]. This cost is a charge against the assets and funds of the credit union to be allowed and paid as the commissioner directs.

(k) If, after a hearing under this section, the board of directors of the credit union is dissatisfied with the decision of the commissioner [~~to issue an order of conservation~~], the board may appeal to the commission by filing with the commissioner a written appeal, including a duly certified resolution of the board, not later than 10 days after the day that the *commissioner's order* [~~of conservation~~] is served. If an appeal is duly filed, the commissioner shall set a date for a hearing on the appeal not more than 30 days after the date on which the appeal is filed. The commissioner shall promptly give notice of the date, time, and place of the hearing to the credit union and any other interested party. The filing of an appeal does not suspend the effect of the order of conservation and this order remains in force pending final disposition of the appeal by the commission. At the conclusion of the hearing, the commission may reverse the order of the commissioner and adopt and approve the credit union's plan to continue operations, affirm the commissioner's order of conservation, or order that other appropriate action be taken.

(l) If the board of directors of the credit union does not file a reply to the order of suspension *or an order of conservation* as required by this section or fails to request and appear at the hearing provided for by this section, the commissioner may dispose of the matter as he considers appropriate. The credit union is presumed to have consented to this action and may not contest it.

SECTION 11. Sections 11.06(c) and (d), Texas Credit Union Act (Article 2461-11.06, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The commission shall annually elect *a chairman and vice-chairman from among* [~~one of~~] its members [~~to serve as chairman~~]. The chairman shall preside at all meetings of the commission, *and the vice-chairman shall preside in the absence of the chairman. If both the chairman and vice-chairman are absent from a meeting, the most senior member of the commission in attendance at the meeting shall serve as acting chairman.*

(d) The commissioner shall attend meetings of the commission *but* [~~and shall preside in the absence of the chairman. The commissioner~~] may not vote at any meeting.

SECTION 12. The heading of Section 11.12, Texas Credit Union Act (Article 2461-11.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.12. *EXAMINATIONS* [~~ANNUAL EXAMINATION~~].

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 15, 1987, by the following vote: Yeas 136, Nays 0, 1 present, not voting. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 17, 1987.

Effective June 17, 1987.