

NEW SECTION. Sec. 6. Sections 1 through 5 of this act shall constitute a new chapter in Title 48 RCW.

Passed the Senate March 21, 1983.

Passed the House April 12, 1983.

Approved by the Governor April 19, 1983.

Filed in Office of Secretary of State April 19, 1983.

## CHAPTER 37

[Engrossed House Bill No. 32]

### CREDIT UNIONS—CORPORATIONS—PROCEDURES—DISTRESSED CREDIT UNIONS—POWERS OF SUPERVISORS

AN ACT Relating to credit unions; amending section 12, chapter 173, Laws of 1933 as last amended by section 2, chapter 8, Laws of 1973 1st ex. sess. and RCW 31.12.160; amending section 14, chapter 173, Laws of 1933 as last amended by section 3, chapter 8, Laws of 1973 1st ex. sess. and RCW 31.12.180; amending section 21, chapter 173, Laws of 1933 as last amended by section 4, chapter 222, Laws of 1975 1st ex. sess. and RCW 31.12.240; amending section 4, chapter 245, Laws of 1977 ex. sess. and RCW 31.12.325; amending section 27, chapter 173, Laws of 1933 as last amended by section 12, chapter 81, Laws of 1981 and RCW 31.12.330; adding new sections to chapter 31.12 RCW; and declaring an emergency.

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

Sec. 1. Section 12, chapter 173, Laws of 1933 as last amended by section 2, chapter 8, Laws of 1973 1st ex. sess. and RCW 31.12.160 are each amended to read as follows:

The annual meeting of the corporation shall be held at such time and place as the bylaws prescribe, but not later than ninety days after the close of the fiscal year. Special meetings may be called at any time by a majority of the directors, and shall be called by the secretary upon written application of ten percent or more of the voting members of the corporation. Notice of all meetings of the corporation and of all meetings of the directors and of committees shall be given as provided in the bylaws. No member may vote by proxy or have more than one vote, and after a credit union has been incorporated for one year, no member may vote until he has been a member for three months. Ballot voting by mail may be authorized by the board of directors as prescribed in the bylaws. To be eligible to vote a member must have not less than one fully paid share. A fraternal organization, voluntary association, partnership, or corporation having a membership in a credit union may cast one vote at any of its meetings by its authorized agent who shall be an officer of that voting organization.

Sec. 2. Section 14, chapter 173, Laws of 1933 as last amended by section 3, chapter 8, Laws of 1973 1st ex. sess. and RCW 31.12.180 are each amended to read as follows:

The directors at their first meeting after the annual meeting shall elect from their own number a president(~~(, one or more vice presidents))~~ or

chairperson, one or more vice presidents or vice chairpersons, a secretary, a treasurer, and such other officers as may be necessary for the transaction of the business of the credit union, who shall be the officers of the corporation and who shall hold office until their successors are elected and qualified unless sooner removed as hereinafter provided: PROVIDED, That the treasurer need not be a director. The board ((~~shall~~)) may select a credit committee composed of three or more members of the credit union, who need not be board members. The offices of secretary and treasurer may be held by the same person. No director shall be a member of both the credit and auditing committee, and no more than one director shall serve on the auditing committee. The board may select an investment committee of not less than three members of the credit union, who need not be board members. No director shall be a member of both the investment and auditing committee. Each officer and employee handling funds of the credit union shall give bond to the directors in such amount and with such surety and conditions as the supervisor may prescribe.

Sec. 3. Section 21, chapter 173, Laws of 1933 as last amended by section 4, chapter 222, Laws of 1975 1st ex. sess. and RCW 31.12.240 are each amended to read as follows:

The establishing or continuance of a credit committee may occur at the option of the board of directors of the credit union. If a credit committee is established or continued in operation, the credit committee shall hold meetings at least once a month; act on all applications for loans; and approve in writing all loans granted and any security pledged therefor.

No loans shall be made unless all the members of the credit committee who are present when the application is considered, which number shall constitute at least two-thirds of the members of the committee, approve such loan, except as provided in RCW 31.12.245. The credit committee may be established in such numbers and at such places as is necessary to serve member needs, with a minimum of two members needed for loan approval: PROVIDED, That such extension of service is approved by the supervisor. No loan shall be granted unless it promises to be of benefit to the borrower. A borrower shall have not less than one fully paid share.

Sec. 4. Section 4, chapter 245, Laws of 1977 ex. sess. and RCW 31.12-.325 are each amended to read as follows:

(1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of credit unions is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the supervisor may furnish examination reports prepared by the supervisor's office to federal agencies empowered to examine state credit unions, to the examined credit

union as provided in subsection (4) of this section, ~~((and))~~ to officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena, and to prospective merger partners or liquidating agents of distressed credit unions. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected credit union and any customer of the credit union who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the division of savings and loan associations and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of savings and loan associations is designed for use in the supervision of the credit union, and the supervisor may furnish a copy of the report to the credit union examined. The report shall remain the property of the supervisor and will be furnished to the credit union solely for its confidential use. Under no circumstances shall the credit union or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new credit union or an application for a branch of a credit union: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of

the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor.

Sec. 5. Section 27, chapter 173, Laws of 1933 as last amended by section 12, chapter 81, Laws of 1981 and RCW 31.12.330 are each amended to read as follows:

The expenses of a credit union shall be paid from its earnings. No credit union shall pay or become liable to pay in any calendar year as salaries, fees, wages, or other compensations to officers, directors, agents, attorneys, clerks, and employees and for rent, advertising, and all other operating expenses, sums of money, the aggregate of which exceeds seven and one-half percent of the average amount of the assets of the union during such year: **PROVIDED**, That a credit union shall not thereby be limited in its expenditures to a sum less than six hundred dollars in any calendar year; **PROVIDED FURTHER**, That forbearance may be granted if, in the supervisor's opinion (1) circumstances warrant it, and (2) waiver will not jeopardize the financial condition of the credit union. Payment of dividends will be suspended during any period in which the expense ratio exceeds seven and one-half percent, unless payment is specifically approved by the supervisor. No credit union shall pay any fee, commission, or other compensation, directly or indirectly, to a person for soliciting the purchase of or selling its shares of stock or for soliciting loans or deposits.

**NEW SECTION.** Sec. 6. There is added to chapter 31.12 RCW a new section to read as follows:

(1) The supervisor may issue and serve upon a credit union a notice of charges if in the opinion of the supervisor the credit union:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the credit union;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the credit union or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the credit union. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the credit union.

Unless the credit union appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the

cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the credit union an order to cease and desist from the violation or practice. The order may require the credit union and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the credit union to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the credit union concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court.

NEW SECTION. Sec. 7. There is added to chapter 31.12 RCW a new section to read as follows:

Whenever the supervisor determines that the acts specified in section 6 of this act or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union or to otherwise seriously prejudice the interests of its depositors, members, or shareholders, the supervisor may also issue a temporary order requiring the credit union to cease and desist from the violation or practice. The order shall become effective upon service on the credit union and shall remain effective unless set aside, limited, or suspended by a court in proceedings under section 8 of this act pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the credit union under section 6 of this act.

NEW SECTION. Sec. 8. There is added to chapter 31.12 RCW a new section to read as follows:

Within ten days after a credit union has been served with a temporary cease and desist order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under section 7 of this act.

The superior court shall have jurisdiction to issue the injunction.

NEW SECTION. Sec. 9. There is added to chapter 31.12 RCW a new section to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under section 7 of this act, the supervisor may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue

an injunction if it determines that there has been a violation or threatened violation.

NEW SECTION, Sec. 10. There is added to chapter 31.12 RCW a new section to read as follows:

(1) Any administrative hearing provided in section 6 of this act may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.04 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the supervisor shall render a decision which shall include findings of fact upon which the decision is based and the supervisor shall issue and serve upon each party to the proceeding an order or orders consistent with section 6 of this act.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected association under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as the supervisor deems proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under sections 6, 7, or 9 of this act to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected association within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it is subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

(4) Service of any notice or order required to be served under sections 6 or 7 of this act shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

NEW SECTION. Sec. 11. There is added to chapter 31.12 RCW a new section to read as follows:

The supervisor may apply to the superior court of the county of the principal place of business of the credit union affected for the enforcement of any effective and outstanding order issued under sections 6, 7, or 9 of this act, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in sections 8 and 10 of this act.

NEW SECTION. Sec. 12. There is added to chapter 31.12 RCW a new section to read as follows:

A credit union may petition the superior court of the state of Washington for Thurston county for the review of any decision, ruling, requirement or other action or determination of the supervisor, by filing its complaint, duly verified, with the clerk of the court and serving a copy thereof upon the supervisor. Upon the filing of the complaint, the clerk of the court shall docket the same as a cause pending therein.

The supervisor may answer the complaint and the petitioner reply thereto, and the cause shall be heard before the court as in other civil actions. Both the petitioner and the supervisor may appeal from the decision of the court to the supreme court or the court of appeals of the state of Washington.

NEW SECTION. Sec. 13. There is added to chapter 31.12 RCW a new section to read as follows:

When a liquidating agent absorbs and agrees to serve the membership of a distressed credit union the supervisor may approve a pooling of assets and liabilities rather than a distribution of assets.

NEW SECTION. Sec. 14. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 11, 1983.

Passed the Senate April 6, 1983.

Approved by the Governor April 19, 1983.

Filed in Office of Secretary of State April 19, 1983.