

- SUBJECT:** Revising regulation of credit union services and management
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 7 ayes — Solomons, Christian, Flynn, Gutierrez, Hopson, Paxton, Wise
0 nays
- WITNESSES:** *(On original bill:)*
For — Gerald Gurney, Texans Credit Union and Texas Credit Union League; John Lederer, Credit Union Legislative Coalition; *(Registered, but did not testify:)* J. Mance Bowden, III, OmniAmerican Credit Union; Kelli Larsen, Firstmark Credit Union; Buddy Schroeder, United Heritage Credit Union.
(On the committee substitute:)
(Registered, but did not testify:) Melodie Stegall, Credit Union Legislative Coalition
- (On original bill:)*
Against — John Heasley, Texas Bankers Association
- (On original bill:)*
On — Harold Feeney, Credit Union Department
- BACKGROUND:** Finance Code, sec. 15.103 directs the Texas Credit Union Department to study Texas statutes periodically and comprehensively as they pertain to credit union operations. The Credit Union Commission adopted the results of its most recent study in July 2002.
- DIGEST:** CSHB 1307 would revise multiple sections in Titles Two and Three of the Finance Code regarding credit unions. Its provisions can be classified into three categories: authority of the credit union commissioner, credit union services, and credit union management.
- Authority of credit union commissioner.** The bill would allow the commissioner to issue opinions on general policy issues as a guide to the public and the industry. Such opinions would be entitled to great weight, though not have the force of law or be considered a rule, unless adopted by

the commission. It also would permit the commissioner to examine a credit union service organization, management entity, or third party contractor related to a credit union and charge a fee for the examination.

The commissioner could suspend or revoke a foreign credit union's authority to do business in Texas upon finding that the credit union was unsafe or unsound. It would require the commissioner to approve a foreign credit union's services if they exceeded the powers granted to state-chartered institutions. If the commissioner issued such an approval, all credit unions operating in the state would have the authority to exercise the given authority. It also would allow the commissioner to make approval of an incorporation application conditional.

The commissioner could make an examination or accept credible evidence that warranted the issuance of a determination letter to a credit union. If the commissioner issued such a letter, it would have to be accompanied by a list of requirements that the credit union would have to satisfy to abate the determination. The commissioner also would have the authority to release information about the final order if its release would enhance its enforcement.

If the commissioner believed that a person posed a threat to the stability of a credit union, the bill would permit the commissioner to prohibit that person from participating in a credit union's affairs, in addition to the commissioner's current authority to remove such a person from office or employment.

CSHB 1307 would authorize the commissioner to issue subpoenas and examine a person under oath. The commissioner also could accept examination reports required by Finance Code, Title 3, section 126.051, from other regulators or from an accountant, rather than conducting its own examination.

The bill would add language regarding a conservatorship and would specify that the commissioner would have to approve related expenses. Though neither the commissioner nor an employee could be compensated for serving as a conservator, the department could be reimbursed for the expenses.

The department could accept gifts, if approved by the commission, and the gifts would have to be used for the purposes specified by the grantor. The commissioner further would be allowed to negotiate contracts for professional and personal services, in accordance with rules set by the commission for such procurements.

Credit union services. The bill would permit a credit union to apply for status as an underserved-area credit union. If so designated by the commissioner, the credit union could operate in two ways not permitted to other credit unions: accepting shares and deposits from nonmembers and issuing secondary capital accounts with advance approval of the commissioner.

CSHB 1307 would change provisions regarding member expulsion. It would specify good cause reasons for expulsion, including abusive behavior, and would permit a person's membership to be terminated or revoked or the credit union to discontinue service to the member. It also would more specifically define who could become a credit union member.

The bill would add a section to Chapter 123 of the Finance Code to permit the commission to authorize credit unions to issue certificates of indebtedness that were subordinated to all other claims of creditors. Another new section would permit the credit union to sell and cash checks and money orders to nonmembers eligible for membership. The bill also would include provisions to guide a credit union in opening and administering a trust account when provided with the limited documentation of a certificate of trust.

Credit union management. Credit unions would be able to limit the number of shares owned by a member, so long as such limitation was applied equally to all members. Credit unions also could establish classes of shares with different rights and restrictions. Credit unions could authorize electronic voting and establish a minimum age requirement for members to exercise voting privileges.

An application to incorporate a credit union would have to contain a detailed three-year business plan. Additionally, credit unions would have to file financial reports with the department quarterly, instead of semiannually, with additional reports as required by the commissioner.

Among other changes concerning the operation of credit union boards, the bill would require monthly board meetings and would permit board members to participate in board meetings via electronic communications devices. The president or an employee of a credit union would be prohibited from serving on its board of directors unless the credit union's bylaws permitted it, provided that credit union employees did not constitute a majority of the board.

Without the commissioner's approval, a credit union would be prohibited from contracting with an entity for management of the credit union unless the entity was an officer, director, or employee. The bill would add specific language to govern third-party claims made on a credit union and would permit credit unions to take any reasonably necessary action to avoid or mitigate a loss on a loan.

The bill would expand language regarding the confidentiality of information obtained by the department. Additionally, it would include a provision to prohibit credit unions from violating state laws governing interest rates, loans fees, and regulatory requirements related to insurance, securities, marketing and sales, or real estate development.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2069 would enact the Credit Union Department's legislative recommendations resulting from its 2002 study. The department held numerous public meetings during the course of its study and sought input from credit unions, their associations, and other interested groups.

Authority of credit union commissioner. The bill would modernize credit union regulation to meet current needs in the industry. Its adoption and implementation would help credit unions provide more responsive and efficient services and ensure that the industry operated safely and soundly. The credit union industry in Texas has grown by 100 percent in the past six years, yet the commissioner's authority has not kept up with its need for regulation. Expanding the commissioner's authority would be good for credit unions because it would help keep bad actors from spoiling the industry's integrity.

The banking commissioner already has the authority to issue policy opinions. Extending this authority to the credit union commissioner would establish parity between the two commissions. The bill's provisions are very similar to those governing the Department of Banking, which have been well-tested.

The commissioner needs the authority to examine credit union service organizations, which function like affiliates. In the common case of a credit union making a substantial loan to the entity, if the entity defaulted, the bad debt could destabilize the credit union. Similarly, if a third-party contractor that performed most of a credit union's data processing off-site failed, the credit union's survival could be at risk. The entities themselves are accustomed to being examined by regulators because other state and federal regulators already have the authority to do so.

Credit union services. Check and money order selling and cashing provisions would benefit nonmembers who otherwise might have to rely on pawnshops or other check cashing services with higher service fees. Many of these nonmembers cannot afford the minimum deposit requirement for membership, but are within the credit union's field of membership.

The bill would maintain parity between state-chartered and foreign credit unions. If the commissioner approved a foreign credit union to offer a non-standard service, the state-chartered credit union would enjoy the same privilege. However, CSHB 1307 would not expand the scope of credit union's authority so as to put other types of financial institutions at a competitive disadvantage.

There is an increasing demand among credit union members to establish accounts in the names of their living trusts, rather than in their own names. Since it has been confusing for some credit unions to understand the provisions on this topic, the bill language would address this uncertainty and allow credit unions to offer this service with confidence.

Credit union management. Credit unions need the authority to dismiss, suspend, or discontinue servicing a member who had verbally or physically abused another member or employee. Though abusive members are rare and current law allows limited membership termination, credit unions should have

recourse to deal more directly with the few individuals who threaten the safety of their members and employees.

In allowing credit unions to establish a minimum voting age, this bill would codify what credit unions already have been doing in practice. The bill language on this point would be permissive and would preserve the credit union's autonomous decision-making authority. A minimum voting age decision would be incorporated into the credit union's by-laws, which would have to be approved by the commissioner, thus giving the commissioner regulatory oversight over unreasonable requirements.

OPPONENTS
SAY:

Authority of credit union commissioner. The bill would not explicitly grant the department regulatory oversight of a credit union's purchasing of assets from another financial institution. Credit unions do this only rarely, but it is an activity for which the commission should have approval authority.

Credit union service organizations, management organizations, and third-party contractors should not be regulated by the commission. The private sector is regulated by the marketplace and does not need government to approve its business practices.

Expanding the commissioner's authority would infringe on the autonomy of credit union governing boards. Board members come from the general membership, are elected by their members, and are free from profit motives; thus, they are very responsive to the needs and preferences of credit union members. Boards govern their credit unions well and should be trusted to do so without expanded oversight from the commission.

Credit union services. Credit unions should not be able to serve nonmembers. They are chartered to serve specific constituents, and services beyond this constituency would give credit unions a competitive advantage over other sectors of the financial services industry that did not have the same tax advantages.

Credit union management. The bill's provisions allowing a credit union to establish a minimum age at which its members may vote would result in inconsistencies and, possibly, unreasonable age minimums. A better approach

would be to set a minimum voting age in state statute to govern all credit unions.

NOTES:

The committee substitute differs from the bill as introduced by deleting proposed language for sec. 122.151, subchapter D of the Finance Code. The section explicitly would have granted credit unions authority, with the approval of the commissioner, to purchase assets of another financial institution. Additionally, the committee substitute would amend the definition of equity capital to require that it be defined in accordance with generally accepted accounting principles.

The committee substitute added language requiring credit unions to follow existing law regarding insurance, securities, real estate development, interest rates, and loan fees. It further would require advance approval by the commissioner of a credit union's management contract with a person who was not an officer, director, or employee. It would permit a credit union to sell and cash checks and money orders to nonmembers within its field of membership. The committee substitute also would require that gifts to the commission be approved by the commission and be used for the purposes specified by the grantor.

The companion bill, SB 812 by Averitt, has been referred to the Senate Business and Commerce Committee.