

BILL ANALYSIS

Senate Research Center
83R8538 ATP-D

C.S.S.B. 244
By: Carona
Business & Commerce
2/13/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The credit union department (department) of the Credit Union Commission has regulatory authority over state-chartered credit unions. Under Section 15.103 of the Texas Finance Code, the department is required to perform a comprehensive study of statutes relating to credit unions on a periodic basis. C.S.S.B. 244 updates those statutes based on the most recent study completed by the department.

C.S.S.B. 244 enables credit unions to provide financial services in an efficient manner and ensure sound practices among state-regulated institutions. C.S.S.B. 244 clarifies supervisory and regulatory matters, removes outdated references, enhances corporate governance, and provides rules for the disclosure of information. C.S.S.B. 244 further provides guidance for compliance with federal and foreign credit unions, clarifies the process by which a state-chartered credit union converts to a federal credit union, and gives state-chartered credit unions limited parity with federal credit unions on interest rates for certain losses.

C.S.S.B. 244 amends current law relating to the administration, operation, supervision, and regulation of credit unions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Credit Union Commission (commission) in SECTION 5 (Section 122.012, Finance Code) of this bill.

Rulemaking authority previously granted to the commission is modified in SECTION 17 (Section 125.402, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 15.403, Finance Code, as follows:

Sec. 15.403. SUPERVISION AND REGULATION OF CREDIT UNIONS. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Authorizes the credit union commissioner (commissioner) to require each credit union to conduct business in compliance with federal laws that apply to credit unions to the extent necessary to the credit union department's (department) authority to supervise and regulate credit unions under this chapter (Credit Union Commission and Department) and Subtitle D (Credit Unions), Title 3 (Financial Institutions and Businesses).

SECTION 2. Amends Section 15.409(d), Finance Code, to require the department to periodically notify the person filing the complaint and each person who is the subject of the complaint, rather than to notify the complaint parties, of the status of the complaint until final disposition.

SECTION 3. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4111, as follows:

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

SECTION 4. Amends Section 122.008(c), Finance Code, to provide that acceptance of a certificate of incorporation by the credit union is conclusive evidence that the credit union is authorized to do business under this subtitle.

SECTION 5. Amends Section 122.012, Finance Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires a credit union to provide the commissioner with written notice not later than the 30th day before the date that the credit union establishes additional offices or service facilities, rather than authorizes a credit union to establish and maintain additional offices or service facilities that are reasonably necessary to provide services to the credit union's members at locations other than its principal place of business after notifying the commissioner in writing. Requires that a new office or service facility be reasonably necessary to provide services to the credit union's members. Requires the credit union to additionally notify the commissioner in writing not later than the 10th business day after the date that the new office or service facility begins operating, rather than requires the credit union to notify the commissioner of the date that the new office or service facility begins operating. Provides that, for purposes of this subsection, an unmanned teller machine is not considered a service facility.

(d) Authorizes a credit union, in accordance with rules adopted by the Credit Union Commission (commission) and after notifying the commissioner in writing, to close any office or service facility, provided that the credit union designates and maintains an office as its principal place of business in this state.

SECTION 6. Amends Sections 122.013(a) and (c), Finance Code, as follows:

(a) Authorizes a foreign credit union to do business in this state if it is organized in a state or country that allows any credit union, rather than a credit union, organized under this subtitle to do business in that state or country.

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

(1) has failed to conduct its business in this state in a manner consistent with the laws of this state, rather than has violated a rule adopted under this subtitle;

(2) is in an unsafe or unsound condition;

(3) refuses to comply with an order of the commissioner, rather than is engaged in a pattern of unsafe or unsound practices;

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

(5) has not met or does not meet a requirement imposed by commission rules, rather than does not meet a commission requirement.

Makes nonsubstantive changes.

SECTION 7. Amends Subchapter A, Chapter 122, Finance Code, by adding Section 122.0131, as follows:

Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. Authorizes the commissioner, if a state contiguous to this state experiences an emergency, on request by that state's credit union regulatory agency, to authorize one or more credit unions located in that state to open temporary offices in this state to more promptly restore credit union services to their members. Requires the commissioner to issue an order permitting the temporary office and specifying the period the office may remain open. Authorizes the commissioner to extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. Authorizes a credit union to convert a temporary office authorized under this section to a permanent location and operate as a foreign credit union if it qualifies to do business in this state as a foreign credit union under Section 122.013 (Foreign Credit Unions) and commission rules.

SECTION 8. Amends Section 122.053(f), Finance Code, as follows:

(f) Prohibits a director from voting by proxy. Authorizes a director to participate in and act at any meeting of the board of directors of a credit union (board) by means of electronic communications equipment through which all persons participating in the meeting can communicate with each other. Deletes existing text authorizing a director's participation if and to the extent provided in the bylaws.

SECTION 9. Amends Sections 122.056(a) and (c), Finance Code, as follows:

(a) Authorizes the board to appoint not more than six, rather than three, individuals to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and otherwise aid the board in carrying out the board's duties and responsibilities.

(c) Requires an honorary or advisory director, except as otherwise provided by Section 125.402(d), to hold in confidence all information the director receives about a credit union during the director's service.

SECTION 10. Amends Section 122.060(a), Finance Code, as follows:

(a) Requires a credit union to submit to the commissioner, in a form approved by the department, a certificate of election that provides the name and address of each officer, director, and committee member elected or appointed. Requires that the certificate be filed within the time prescribed by the commissioner. Deletes existing text requiring the board chairman and the secretary to execute a certificate of election that states the name and address of each officer, director, and committee member elected or appointed, and file a copy of the certificate not later than the 30th day after the date of the annual organizational meeting of election or appointment of any interim officer, director, or committee member.

SECTION 11. Amends Section 122.061, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits a person, while serving as a director, honorary director, advisory director, committee member, officer, or employee of the credit union, from directly or indirectly participating in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of a member of the person's immediate family or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested or become employed by, engage in, or own an interest in a business or professional activity that the person could reasonably expect to require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union or impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.

(c) Defines "member of a person's immediate family" in this section.

SECTION 12. Amends Section 122.064, Finance Code, as follows:

Sec. 122.064. INDEMNIFICATION. Authorizes a credit union to elect to indemnify a director, officer, employee, or agent of the credit union, rather than or another person, and to purchase insurance as if the credit union were an "enterprise" as defined by Section 8.001 (Definitions), Business Organizations Code, under and subject to the credit union's bylaws and written policy. Prohibits a credit union from providing any indemnification or insurance that would not be permissible under Chapter 8 (Indemnification and Insurance), Business Organizations Code. Authorizes a credit union to elect to impose the credit union's own limitations on indemnification. Deletes existing text which sets forth certain conditions by which a credit union is authorized to elect to indemnify a director, officer, employee, or agent of the credit union or another person and to purchase insurance.

SECTION 13. Amends Sections 122.101(a) and (b), Finance Code, as follows:

(a) Requires a credit union to prepare a quarterly call report in a manner approved by the department that states the credit union's financial condition rather than submit to the department a quarterly call report on a form supplied by the department.

(b) Requires the credit union to submit the call report on or before the due date prescribed by the department. Makes a conforming change.

SECTION 14. Amends Section 122.201, Finance Code, as follows:

Sec. 122.201. CONVERSION OF STATE CREDIT UNION TO FEDERAL CREDIT UNION. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that on the issuance of a charter by the National Credit Union Administration, a credit union ceases to be a credit union incorporated under this subtitle, and is no longer subject to the supervision and regulation of the commissioner and department.

(c) Requires a converted credit union to file with the commissioner a copy of the charter issued to the credit union by the National Credit Union Administration. Provides that failure to file the required copy of the charter does not affect the validity of the conversion.

SECTION 15. Amends Section 123.106, Finance Code, as follows:

Sec. 123.106. CHANGE OF LOCATION. (a) Creates this subsection from existing text. Requires a credit union changing the location of its principal place of business or any additional office or service facility to notify the commissioner in writing of the new location and the scheduled or effective date of the change, rather than authorizing a credit union to change its principal place of business or a subsidiary place of business to another location by notifying the commissioner in writing of the new address and the effective date of change.

(b) Requires the credit union to submit notice to the commissioner not later than the 30th day before the scheduled or effective date of the change. Authorizes the commissioner to waive or reduce the timing of the notice requirement under this subsection.

SECTION 16. Amends Section 124.002, Finance Code, to add a provision prohibiting the interest rate on a loan to a member from exceeding 28 percent a year to the extent that federal credit unions are permitted to charge that rate.

SECTION 17. Amends Section 125.402, Finance Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes the commission to adopt reasonable rules relating to the permissible disclosure of nonpublic personal information about, rather than confidentiality of, the accounts of credit union members and duties of the credit union to maintain confidentiality of member accounts, rather than that confidentiality.

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

SECTION 18. Amends Sections 126.002(c) and (e), Finance Code, as follows:

(c) Adds a share insuring organization to the entities to which the commissioner is authorized to disclose the information described by Subsection (a) if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

(e) Authorizes a credit union to disclose a report of examination or relevant portions of the report to another credit union proposing to merge or consolidate with the credit union or to a fidelity bond carrier if the recipient executes a written agreement not to disclose information in the report.

SECTION 19. Amends Section 126.101, Finance Code, by adding Subsection (c), to authorize the board to agree in writing to a conservatorship order and waive its right to appeal the order under Section 126.105 (Appeal of Order; Hearing).

SECTION 20. Amends Sections 126.102(b) and (c), Finance Code, as follows:

(b) Authorizes service by mail if an officer or director is not available for service on the date personal service of the order is attempted, rather than on the date of issuance.

(c) Deletes existing subdivision designations. Requires that service by mail be by certified or registered mail, be addressed to the credit union at the address shown for its principal office by department records and to the home address of the chairman of the board, and is complete on deposit of the order in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Makes nonsubstantive changes.

SECTION 21. Amends Sections 126.105(a) and (b), Finance Code, as follows:

(a) Authorizes the board to file a written appeal of the conservatorship order with the commissioner not later than the 10th business day after the date the order is served as provided by Section 126.102 unless the board waives its right to appeal under Section 126.101(c). Requires that the appeal include a certified copy of the board resolution and state whether the board requests a hearing.

(b) Requires the commissioner, if the board requests a hearing, rather than if the board files an appeal to request a hearing before the commission, to promptly request from the State Office of Administrative Hearings (SOAH) a hearing date that is not earlier than the 11th day nor later than the 30th day after the date on which the commissioner receives the appeal. Makes a conforming change.

SECTION 22. Amends Section 126.106, Finance Code, as follows:

Sec. 126.106. New heading: FAILURE TO APPEAL OR APPEAR. Deletes existing Subsection (a) designation. Provides that the credit union is presumed to have consented to the commissioner's disposition action and the commissioner is authorized to dispose of

the conservatorship matter as the commissioner considers appropriate if the board does not appeal to the conservatorship order or fails to appear at the hearing provided for by Section 126.105. Deletes existing text authorizing the commissioner to dispose of the conservatorship matter if the board does not file a reply to the conservatorship order as required by Section 126.104 (Reply to Order) or fails to request and appear at the hearing provided for by Section 126.105. Deletes existing Subsection (b) providing that the credit union is presumed to have consented to the commissioner's disposition action and may not contest it.

SECTION 23. Amends Section 126.201, Finance Code, as follows:

Sec. 126.201. LIQUIDATION ORDER; APPOINTMENT OF LIQUIDATING AGENT.

(a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Authorizes the commissioner to issue a liquidation order without first issuing a conservatorship order if the board consents to the liquidation order and waives the necessity of a conservatorship order.

SECTION 24. Amends Section 126.455, Finance Code, to authorize a majority of the credit union members voting, rather than a majority of the credit union members, but not less than a quorum, to vote to dissolve and liquidate the credit union at a special meeting called to consider the proposed liquidation.

SECTION 25. Repealer: Section 126.104 (Reply to Order), Finance Code.

SECTION 26. Effective date: September 1, 2013.