

1 A bill to be entitled
2 An act relating to financial institutions and
3 transactions; amending s. 655.005, F.S.; revising
4 definitions; creating s. 655.0201, F.S.; providing
5 requirements and procedures for service of process,
6 notice, or demand on financial institutions; amending s.
7 655.044, F.S.; establishing the fiscal year end for
8 financial institutions; amending s. 655.057, F.S.;
9 removing references to the Florida Credit Union Guaranty
10 Corporation, Inc.; amending s. 655.411, F.S.; correcting a
11 cross reference; creating s. 655.4185, F.S.; authorizing
12 the Office of Insurance Regulation to issue certain
13 emergency orders authorizing certain actions that may be
14 taken against a failing financial entity; specifying
15 findings necessary for such orders; authorizing the office
16 to take certain enforcement actions; protecting
17 stockholder procedural rights and compensation
18 entitlements; amending s. 657.002, F.S.; revising
19 definitions; amending s. 657.005, F.S.; revising
20 application procedures for authority to organize a credit
21 union; amending s. 657.0061, F.S.; providing an additional
22 ground for disapproval of a bylaw amendment; amending s.
23 657.008, F.S.; revising provisions relating to principal
24 place of doing business; revising notification dates and
25 conditions for maintaining branches; requiring deposits of
26 a foreign credit union to be insured by the National
27 Credit Union Administration; amending s. 657.021, F.S.;
28 revising provisions relating to a credit union's board of

29 | directors; clarifying terms of board of directors members;
30 | requiring a board of directors to manage a credit union in
31 | a safe and sound manner; revising requirements and
32 | authority of a board of directors; requiring officer and
33 | director liability insurance and bond coverage;
34 | authorizing delegation of certain functions; requiring
35 | that policies on operations of a credit union accord with
36 | commission rules; amending s. 657.022, F.S.; modifying the
37 | time period for the annual meeting of the board of
38 | directors; amending s. 657.023, F.S.; revising a credit
39 | union's authority to close accounts and terminate
40 | membership; amending s. 657.024, F.S.; revising procedures
41 | for distribution of ballots; amending s. 657.026, F.S.;
42 | deleting reference to the Florida Credit Union Guaranty
43 | Corporation, Inc.; clarifying notification required to
44 | board of directors and the office of any unsafe or unsound
45 | practice; amending s. 657.027, F.S.; clarifying the
46 | authority of a credit manager; amending s. 657.028, F.S.;
47 | clarifying which persons may not be compensated for
48 | service; revising the prohibition on persons who may not
49 | serve as officer, director, or committee member; amending
50 | s. 657.031, F.S.; specifying the powers of a credit union;
51 | prohibiting challenges to the validity of certain actions
52 | of a credit union under certain circumstances; authorizing
53 | the Financial Services Commission to adopt rules; amending
54 | s. 657.033, F.S.; revising criteria for dormant accounts;
55 | revising a time period for characterizing a dormant
56 | account as unclaimed or abandoned property; specifying

57 | what shares and deposits may be received by a credit
 58 | union; authorizing credit unions to participate in
 59 | electronic fund transfer, withdrawal, and deposit systems;
 60 | requiring a credit union to maintain account insurance;
 61 | amending s. 657.038, F.S.; revising limitations on total
 62 | unsecured obligations; providing an exception; revising
 63 | loan and credit authority of a credit union; authorizing a
 64 | credit union to issue credit cards and debit cards for
 65 | certain purposes; authorizing the commission to allow by
 66 | rule for the use of devices similar to credit card and
 67 | debit cards; amending s. 657.039, F.S.; revising a credit
 68 | union's authority to extend credit to its directors;
 69 | revising credit limitations; amending s. 657.042, F.S.;
 70 | amending the investment authority of a credit union;
 71 | revising limitations; amending s. 657.043, F.S.; revising
 72 | requirements for regular reserves, loan losses accounts,
 73 | investment losses, and special reserves; authorizing a
 74 | credit union to borrow money and issue evidence of
 75 | indebtedness; providing limitations; deleting provisions
 76 | relating to transfers to regular reserve, risk assets,
 77 | reserve for contingencies, equity to asset ratio
 78 | requirements, and guaranty assistance agreements; amending
 79 | s. 657.062, F.S.; providing requirements for appointment
 80 | of the National Credit Union Administration as conservator
 81 | of a credit union under certain circumstances; providing
 82 | criteria; amending s. 657.063, F.S.; revising requirements
 83 | for the involuntarily liquidation of a credit union;
 84 | authorizing the commission to define by rule criteria for

85 | determining the adequacy of capitalization of a credit
 86 | union; amending s. 657.064, F.S.; revising requirements
 87 | and criteria for voluntary liquidation of a credit union;
 88 | removing references to the Florida Credit Union Guaranty
 89 | Corporation; amending s. 657.065, F.S.; revising
 90 | requirements, procedures, criteria, and limitations for
 91 | the merger of credit unions; providing requirements for
 92 | merger plans and agreements; providing authority and
 93 | requirements for the office to approve merger applications
 94 | and merger plans and agreements; providing for revocation
 95 | and termination of merger plans and agreements under
 96 | certain circumstances; providing for mergers without a
 97 | vote of membership under certain circumstances; requiring
 98 | approval of a merger by the National Credit Union
 99 | Administration and issuance by the office of a certificate
 100 | of merger; specifying consequences of mergers; preserving
 101 | rights of members; amending s. 657.066, F.S.; revising
 102 | requirements for conversion of a credit union from state
 103 | to federal and conversely; amending s. 658.43, F.S., to
 104 | conform; repealing s. 657.0315, F.S., relating to
 105 | contracts for providing goods, products, or services;
 106 | repealing s. 657.051, F.S., relating to the fiscal year of
 107 | a credit union; repealing s. 657.055, F.S., relating to
 108 | retention and destruction of records; repealing s.
 109 | 657.068, F.S., relating to central credit unions;
 110 | providing an effective date.

111 |
 112 | Be It Enacted by the Legislature of the State of Florida:

113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140

Section 1. Paragraphs (k) and (l) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.--

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(k) "Imminently insolvent" means a condition in which a financial institution has total capital accounts, or equity ~~less the allowance for loan losses~~ in the case of a credit union, of less than 2 percent of its total assets, after adjustment for apparent losses.

(l) "Insolvent" means a condition in which:

1. The capital accounts, or equity ~~less the allowance for loan losses~~ in the case of a credit union, and all assets of a financial institution are insufficient to meet liabilities;

2. The financial institution is unable to meet current obligations as they mature, even though assets may exceed liabilities; or

3. The capital accounts, or equity ~~less the allowance for loan losses~~ in the case of a credit union, of a financial institution are exhausted by losses and no immediate prospect of replacement exists.

Section 2. Section 655.0201, Florida Statutes, is created to read:

655.0201 Service of process, notice, or demand on financial institutions.--

(1) Process against any financial institution authorized by federal or state law to transact business in this state may

141 be served in accordance with chapter 48, chapter 49, chapter
 142 607, or chapter 608, as appropriate.

143 (2) Any financial institution authorized by federal or
 144 state law to transact business in this state may designate a
 145 registered agent as the financial institution's agent for
 146 service of process, notice, or demand required or permitted by
 147 law to be served on the financial institution. If the financial
 148 institution has no registered agent, or its registered agent
 149 cannot with reasonable diligence be served, service may be made
 150 on any executive officer of the financial institution at its
 151 principal place of business in this state.

152 (3) If service cannot be made in accordance with
 153 subsection (2), service may be made on any officer, director, or
 154 business agent of the financial institution at either its
 155 principal place of business or any other branch, office, or
 156 place of business in this state.

157 (4) This section does not prescribe the only means, or
 158 necessarily the required means, of serving notice or demand on a
 159 financial institution.

160 Section 3. Subsection (5) is added to section 655.044,
 161 Florida Statutes, to read:

162 655.044 Accounting practices; bad debts ineligible to be
 163 carried as assets.--

164 (5) The fiscal year of a financial institution shall end
 165 December 31.

166 Section 4. Subsections (3) and (7) of section 655.057,
 167 Florida Statutes, are amended to read:

168 655.057 Records; limited restrictions upon public
 169 access.--

170 (3) The provisions of this section do not prevent or
 171 restrict:

172 (a) Publishing reports required to be submitted to the
 173 office pursuant to s. 655.045(2)(a) or required by applicable
 174 federal statutes or regulations to be published.

175 (b) Furnishing records or information to any other state,
 176 federal, or foreign agency responsible for the regulation or
 177 supervision of financial institutions, including Federal Home
 178 Loan Banks.

179 ~~(c) Furnishing records or information, in the case of a~~
 180 ~~credit union, to the Florida Credit Union Guaranty Corporation,~~
 181 ~~Inc.~~

182 (c)~~(d)~~ Disclosing or publishing summaries of the condition
 183 of financial institutions and general economic and similar
 184 statistics and data, provided that the identity of a particular
 185 financial institution is not disclosed.

186 (d)~~(e)~~ Reporting any suspected criminal activity, with
 187 supporting documents and information, to appropriate law
 188 enforcement and prosecutorial agencies.

189 (e)~~(f)~~ Furnishing information upon request to the Chief
 190 Financial Officer or the Division of Treasury of the Department
 191 of Financial Services regarding the financial condition of any
 192 financial institution that is, or has applied to be, designated
 193 as a qualified public depository pursuant to chapter 280.

194

195 Any confidential information or records obtained from the office
 196 pursuant to this subsection shall be maintained as confidential
 197 and exempt from the provisions of s. 119.07(1).

198 (7) Materials supplied to the office or to employees of
 199 any financial institution by other governmental agencies,
 200 federal or state, ~~or the Florida Credit Union Guaranty~~
 201 ~~Corporation, Inc.~~, shall remain the property of the submitting
 202 agency or the corporation, and any document request must be made
 203 to the appropriate agency. Any confidential documents supplied
 204 to the office or to employees of any financial institution by
 205 other governmental agencies, federal or state, ~~or by the Florida~~
 206 ~~Credit Union Guaranty Corporation, Inc.~~, shall be confidential
 207 and exempt from the provisions of s. 119.07(1). Such information
 208 shall be made public only with the consent of such agency or the
 209 corporation.

210 Section 5. Paragraph (b) of subsection (1) of section
 211 655.411, Florida Statutes, is amended to read:

212 655.411 Conversion of charter.--

213 (1) Any financial entity may apply to the office for
 214 permission to convert its charter without a change of business
 215 form or convert its charter in order to do business as another
 216 type of financial entity in accordance with the following
 217 procedures:

218 (b) Following approval by the board of directors, the
 219 conversion plan, together with a certified copy of the
 220 authorizing resolution adopted by the board, must be submitted
 221 to the office for approval before being submitted to the members
 222 or stockholders of the financial entity. The application for

223 conversion must be in the form prescribed by the commission,
 224 contain such additional information as the commission or office
 225 reasonably requires, and be accompanied by a filing fee in
 226 accordance with s. 657.066~~(3)(4)~~ or s. 658.73. Additionally, the
 227 office is authorized to assess any financial entity, applying to
 228 convert pursuant to this section, a nonrefundable examination
 229 fee to cover the actual costs of any examination required as a
 230 part of the application process.

231 Section 6. Section 655.4185, Florida Statutes, is created
 232 to read:

233 655.4185 Emergency action.--

234 (1) Notwithstanding any other provisions of the financial
 235 institutions codes or of chapter 120, if the office or the
 236 appropriate federal regulatory agency finds that immediate
 237 action is necessary in order to prevent the probable failure of
 238 one or more financial institutions, which in this subsection may
 239 be referred to as a "failing financial entity," the office may,
 240 with the concurrence of the appropriate federal regulatory
 241 agency in the case of any financial institution the deposits of
 242 which are insured by the Federal Deposit Insurance Corporation
 243 or the National Credit Union Administration, issue an emergency
 244 order authorizing:

245 (a) The merger of any such failing financial entity with
 246 an appropriate state financial entity;

247 (b) An appropriate state financial entity to acquire the
 248 assets and assume the liabilities of any such failing financial
 249 entity, including all rights, powers, and responsibilities as

250 fiduciary in instances in which the failing financial
 251 institution is actively engaged in the exercise of trust powers;

252 (c) The conversion of any such failing financial entity
 253 into a state financial entity; or

254 (d) The chartering of a new state financial entity to
 255 acquire the assets and assume the liabilities of any such
 256 failing financial entity and to assume rights, powers, and
 257 responsibilities as fiduciary in cases in which such failing
 258 financial entity is engaged in the exercise of trust powers.

259 (2) Any such finding by the office shall be based upon
 260 reports furnished to the office by a state or federal financial
 261 institution examiner or upon other evidence from which it is
 262 reasonable to conclude that any such financial institution is
 263 insolvent or is threatened with imminent insolvency. The office
 264 may disallow illegally obtained currency, monetary instruments,
 265 funds, or other financial resources from the capitalization
 266 requirements of the financial institution codes. The
 267 stockholders of a failing bank, association, or trust company
 268 that is acquired by another bank or trust company pursuant to
 269 this section shall be entitled to the same procedural rights and
 270 to compensation for the remaining value of their shares as is
 271 provided for dissenters in s. 658.44, except that they shall
 272 have no right to vote against the transaction. Any transaction
 273 authorized by this section may be accomplished through the
 274 organization of a successor institution.

275 Section 7. Section 657.002, Florida Statutes, is amended
 276 to read:

277 657.002 Definitions.--As used in this chapter:

278 (1) "Capital" means shares, deposits, and equity.
 279 ~~(2) "Central credit union" means a credit union the~~
 280 ~~membership of which includes, but is not limited to, other~~
 281 ~~credit unions, members of credit unions, credit union employees,~~
 282 ~~employees of organizations serving credit unions, and the~~
 283 ~~families of such members.~~
 284 (2)~~(3)~~ "Corporate credit union" means any central credit
 285 union organized pursuant to any state or federal act for the
 286 purpose of serving other credit unions.
 287 ~~(4) "The corporation" means the Florida Credit Union~~
 288 ~~Guaranty Corporation, Inc.~~
 289 (3)~~(5)~~ "Correspondent" means that person designated on an
 290 application to organize a credit union as the person to whom all
 291 correspondence regarding the application should be sent.
 292 (4)~~(6)~~ "Credit union" means any cooperative society
 293 organized pursuant to this chapter.
 294 (5)~~(7)~~ "Deposits" means that portion of the money placed
 295 ~~capital paid~~ into the credit union by members on which a
 296 ~~contractual rate of interest~~ may will be paid.
 297 (6)~~(8)~~ "Equity" means undivided earnings, regular
 298 reserves, and other reserves ~~allowance for loan losses.~~
 299 (7)~~(9)~~ "Foreign credit union" means a credit union
 300 organized and operating under the laws of another state.
 301 (8)~~(10)~~ "Immediate family" means parents, children,
 302 spouse, or surviving spouse of the member, or any other relative
 303 by blood, marriage, or adoption.

304 ~~(9)(11)~~ "Limited field of membership" means the defined
 305 group of persons designated as eligible for membership in the
 306 credit union who:

307 (a) Have a similar profession, occupation, or formal
 308 association with an identifiable purpose; or

309 (b) Live or work ~~Reside~~ within an identifiable
 310 neighborhood, community, rural district, or county; or

311 (c) Are employed by a common employer; or

312 (d) Are employed by the credit union; and

313
 314 members of the immediate family of persons within such group.

315 ~~(10)(12)~~ "Shares" means ~~that portion of the~~ money capital
 316 paid into the credit union by members on which dividends may be
 317 paid.

318 ~~(13) "Unimpaired capital" means capital which is not~~
 319 ~~impaired by losses that exceed applicable reserves.~~

320 Section 8. Subsection (1), paragraphs (a) and (d) of
 321 subsection (3), paragraph (b) of subsection (5), and subsections
 322 (9) and (10) of section 657.005, Florida Statutes, are amended
 323 to read:

324 657.005 Application for authority ~~Notice of intent to~~
 325 ~~organize a credit union; investigation; application for~~
 326 ~~authority to organize a credit union.--~~

327 (1) The proposed organizers of the proposed credit union
 328 shall file with the office an application ~~a notice of intent to~~
 329 ~~organize,~~ upon such form as the commission may, by rule,
 330 prescribe.

331 (3) The application shall be submitted to the office on
 332 forms and in the manner prescribed by rules adopted by the
 333 commission and shall be accompanied by a nonrefundable filing
 334 fee of \$250. Such application shall include:

335 (a) The proposed name and the proposed location where the
 336 proposed credit union is to have its principal place of business
 337 and where legal service must be served.

338 (d) Any information required by the commission or office
 339 to be submitted to the National Credit Union Administration
 340 ~~corporation or insuring agency.~~

341 (5) The application shall be approved if the office
 342 determines that:

343 (b) The qualifications of the proposed board of directors
 344 and committee members are such as to indicate a reasonable
 345 likelihood that the affairs of the proposed credit union will be
 346 administered consistently with applicable laws and sound
 347 financial and credit union practices;

348 (9) The office shall perform a preopening examination to
 349 verify good faith compliance with all the requirements of law.
 350 If the office finds that such requirements have been met, it
 351 shall issue and deliver the certificate of authorization to
 352 transact business. Any credit union which fails to open for
 353 business within 6 months after the issuance of such certificate
 354 will forfeit its existence as a credit union, and the
 355 certificate of authorization shall be revoked. For good cause
 356 shown, the office may extend the opening date for an additional
 357 6 months on its own motion or at the request of the credit
 358 union. ~~Amounts credited on share accounts, less expenditures~~

359 ~~authorized by law, shall be returned pro rata to the respective~~
 360 ~~account holders.~~

361 (10) All preopening costs and expenses in connection with
 362 the organization of the credit union and preparation for opening
 363 for business may be paid only from funds provided by the
 364 organizers or a sponsor ~~and may be reimbursed by the credit~~
 365 ~~union only out of undivided earnings, after provision has been~~
 366 ~~made for reserves and dividends.~~ However, the credit union may
 367 record reimburse, as an operating expense, costs for forms, and
 368 supplies, insurance, rent, and other expenses applicable to or
 369 consumed in the period after opening in accordance with rules
 370 adopted by the commission.

371 Section 9. Subsection (1) of section 657.0061, Florida
 372 Statutes, is amended to read:

373 657.0061 Amendments to bylaws.--

374 (1) All bylaw amendments must be submitted to the office.
 375 The office shall approve or disapprove bylaw amendments within
 376 60 days after receipt. The office shall approve the proposed
 377 bylaw amendment unless it finds that the amendment:

- 378 (a) Is not in the best interest of the membership;
- 379 (b) Is not in accord with sound credit union practices; ~~or~~
- 380 (c) Exposes the assets of the credit union to unnecessary
 381 risks; or-
- 382 (d) Is not in compliance with applicable laws or rules.

383 Section 10. Subsections (1), (2), (5), (6), and (7) of
 384 section 657.008, Florida Statutes, are amended to read:

385 657.008 Place of doing business.--

386 (1) Every credit union authorized to transact business
 387 pursuant to the laws of this state shall have one principal
 388 place of doing business as designated in its bylaws and where
 389 legal process shall be served. A credit union may change its
 390 place of business through an amendment to its bylaws.

391 (2)(a) With 30 days' prior written notification to the
 392 office, or within such other time as may be approved by the
 393 office, a credit union operating in a safe and sound manner may
 394 maintain branches at locations other than its main office or
 395 relocate branches previously established if the maintenance of
 396 such branches is determined by the board of directors to be
 397 reasonably necessary to furnish service to its members.

398 ~~(b) Investments in such branch offices shall comply with~~
 399 ~~the limitations imposed by s. 657.042(5).~~

400 (b)(e) If any branch is located outside this state, the
 401 cost of examining such branch shall be borne by the credit
 402 union. Such cost shall include, but shall not be limited to,
 403 examiner travel expense and per diem.

404 ~~(5) A credit union may change its principal place of~~
 405 ~~business within this state upon approval by the office.~~

406 (5)(6)(a) The office may authorize foreign credit unions
 407 to establish branches in Florida if all of the following
 408 criteria are met:

409 1. The state in which the foreign credit union's home
 410 office is located permits Florida credit unions to do business
 411 in the state under restrictions that are no greater than those
 412 placed upon a domestic credit union doing business in that
 413 state. For this purpose, such restrictions shall include, but

414 are not limited to, any fees, bonds, or other charges levied on
 415 domestic credit unions doing business in that state.

416 2. The deposits of such foreign credit union and its
 417 proposed Florida branch shall have insurance of accounts with
 418 the National Credit Union Administration ~~will be insured or~~
 419 ~~guaranteed by an insurer or guarantor acceptable to the office.~~
 420 ~~Insurance or guarantee of accounts comparable to that provided~~
 421 ~~by the Florida Credit Union Guaranty Corporation is deemed to be~~
 422 ~~acceptable; however, acceptance of insurance or guarantee of~~
 423 ~~accounts by any insuring or guaranteeing agencies or companies~~
 424 ~~shall be subject to a determination by the office that the~~
 425 ~~insuring or guaranteeing agency or company is in sound financial~~
 426 ~~condition and that its reserves with respect to its insured or~~
 427 ~~guaranteed accounts are no less than those of the Florida Credit~~
 428 ~~Union Guaranty Corporation.~~

429 3. The credit union's field of membership is so limited as
 430 to be within that meaning of that term as defined in s. 657.002.

431 (b) Every foreign credit union operating in Florida shall
 432 keep the office informed of every location at which it is
 433 operating.

434 (c) If the office has reason to believe that a foreign
 435 credit union is operating a branch in this state in an unsafe
 436 and unsound manner, it shall have the right to examine such
 437 branch. If, upon examination, the office finds that such branch
 438 is operating in an unsafe and unsound manner, it shall require
 439 the branch office to make appropriate modifications to bring
 440 such branch operations into compliance with generally accepted
 441 credit union operation in this state. Such foreign credit union

442 shall reimburse the office for the full cost of this
 443 examination. Costs shall include examiner salaries, per diem,
 444 and travel expenses.

445 (d) Any foreign credit union operating in this state shall
 446 in any connection therewith be subject to suit in the courts of
 447 this state, by this state and the citizens of this state.

448 (6)~~(7)~~ A credit union may provide, directly or through a
 449 contract with another company, off-premises armored car services
 450 to its members. Armored car services do not constitute a branch
 451 for the purposes of this section.

452 Section 11. Section 657.021, Florida Statutes, is amended
 453 to read:

454 657.021 Board of directors; executive committee.--

455 (1) The credit union shall have a board of directors
 456 consisting of at least five directors to be elected from the
 457 members in the manner and for such terms as prescribed in the
 458 bylaws.

459 ~~(2) Directors shall hold office for such terms as the~~
 460 ~~bylaws provide.~~

461 (2)~~(3)~~ Each director, upon assuming office, shall
 462 acknowledge that he or she is familiar with his or her
 463 responsibilities as a director and that he or she will
 464 diligently and honestly administer the affairs of such credit
 465 union and will not knowingly violate, or willfully permit to be
 466 violated, any of the provisions of the financial institutions
 467 codes or pertinent rules of the commission. The signed copy of
 468 such oath shall be filed with the office within 30 days after
 469 election.

470 ~~(3)~~(4) The board of directors shall fill any vacancies on
 471 the board by appointment until successors are elected as
 472 provided in the bylaws.

473 ~~(4)~~(5) The board of directors and the executive committee
 474 shall meet as often as required in the bylaws.

475 ~~(5)~~(6) The board of directors must ensure that ~~determine~~
 476 the general direction of the business affairs, ~~manage the funds,~~
 477 ~~and maintain the records~~ of the credit union is managed in a
 478 manner that is consistent with safe and sound credit union
 479 practices.

480 ~~(6)~~(7) The board of directors shall ~~must exercise the~~
 481 ~~following duties which are nondelegable:~~

482 (a) Obtain and maintain officer and director liability
 483 insurance and blanket bond coverage under such terms, amounts,
 484 and limitations established by rules adopted by the commission
 485 ~~Require any officer or employee who has custody of or handles~~
 486 ~~funds to give bond with good and sufficient surety in an amount~~
 487 ~~and character determined by the board of directors in compliance~~
 488 ~~with rules adopted by the commission.~~

489 ~~(b)~~ ~~Establish the maximum amount of credit which may be~~
 490 ~~extended to a member and establish written credit policies,~~
 491 ~~including, without limitation, security requirements and terms~~
 492 ~~of repayment.~~

493 ~~(b)~~(e) Establish written policies governing all areas of
 494 operations ~~loans, investments, equity, personnel, collections,~~
 495 ~~the conduct of officers, employees, and committee members, and~~
 496 ~~continuing education for directors and committee members and~~

497 ~~other policies~~ necessary for prudent credit union practices in
 498 accordance with the rules of the commission.

499 ~~(c)(d)~~ Declare any dividends on shares.

500 ~~(d)(e)~~ Adequately provide for reserves as required by this
 501 chapter or by rules or order of the commission or office or as
 502 otherwise determined necessary by the board.

503 ~~(e)(f)~~ Employ a chief executive officer, ~~whose title may~~
 504 ~~be either president or general manager,~~ or, in lieu thereof,
 505 designate any board member ~~the treasurer~~ to act as the chief
 506 executive officer and to be in active charge of the affairs of
 507 the credit union.

508 ~~(8) The board of directors must exercise the following~~
 509 ~~duties, which may be delegated within specific guidelines and~~
 510 ~~policies established by board resolutions:~~

511 ~~(f)(a)~~ Act on applications for membership, or appoint one
 512 or more membership officers to approve or deny applications for
 513 membership, under such conditions as may be determined by policy
 514 of the board of directors ~~prescribed in the bylaws. A record of~~
 515 ~~a membership officer's approval or denial of membership must be~~
 516 ~~made available to the board for inspection. A person denied~~
 517 membership by a membership officer may appeal the denial to the
 518 board.

519 ~~(g)(b)~~ Determine, from time to time, the interest rate or
 520 rates which are charged on extensions of credit ~~and authorize~~
 521 ~~any interest refunds to members from income earned and received~~
 522 ~~in proportion to the interest paid by them on such classes of~~
 523 ~~credit and~~ under such conditions as the board prescribes.

524 ~~(h)(e)~~ Determine the interest rates which will be paid on
525 deposits and the manner of calculating those rates.

526 ~~(i)(d)~~ Invest funds, except that the board may designate
527 an investment committee or any qualified individual to make
528 investments pursuant to written policies established by the
529 board.

530 (j) Designate a depository or depositories for the funds
531 of the credit union under such conditions as the board
532 prescribes.

533

534 Nothing in this subsection shall prohibit the board from
535 delegating, within specific guidelines and policies established
536 by board resolutions, those functions delineated in paragraph
537 (f), paragraph (g), paragraph (h), paragraph (i), or paragraph
538 (j).

539 ~~(7)(9)~~ The board of directors has authority, which may not
540 be delegated, to:

541 (a) Limit the number of shares and the amount of deposits
542 which may be owned by a member, which limitation must apply to
543 all members.

544 ~~(b) Designate a depository or depositories for the funds~~
545 ~~of the credit union.~~

546 ~~(b)(e)~~ Suspend and remove any member of any of its
547 committees for failure to perform his or her duties or for other
548 just cause.

549 ~~(c)(d)~~ Establish any committee determined to be necessary
550 and appoint its membership.

551 ~~(d)(e)~~ Call special meetings of the members.

552 ~~(10) The board of directors has authority, which may be~~
 553 ~~delegated within specific guidelines and policies established by~~
 554 ~~board resolutions, to:~~

555 ~~(a) Authorize the employment of persons necessary to carry~~
 556 ~~on the business of the credit union.~~

557 ~~(b) Authorize the purchase, lease, rental, or sale of~~
 558 ~~personal property necessary to carry on the business of the~~
 559 ~~credit union.~~

560 ~~(c) Borrow or lend money to carry on the functions of the~~
 561 ~~credit union.~~

562 (8)~~(11)~~ The board of directors may appoint an executive
 563 committee that ~~which~~ may be authorized to act for the board in
 564 all respects, subject to such conditions and limitations as are
 565 prescribed by the board in writing. The executive committee
 566 shall be composed of the executive officers as defined in s.
 567 657.022.

568 Section 12. Subsection (1) of section 657.022, Florida
 569 Statutes, is amended to read:

570 657.022 Executive officers.--

571 (1) At the organizational meeting and within 31 ~~7~~ days
 572 following each annual meeting of the members, the directors
 573 shall hold the annual meeting of the board of directors and
 574 elect from their own number a presiding officer, who may be
 575 designated as chair of the board or president; one or more vice
 576 chairs or one or more vice presidents, as the case may be; a
 577 treasurer; and a secretary. The treasurer and the secretary may
 578 be the same individual. The persons so elected shall be the
 579 executive officers of the organization.

580 Section 13. Subsection (3) of section 657.023, Florida
 581 Statutes, is amended to read:

582 657.023 Membership.--

583 (3) A credit union may ~~not restrict any member's rights,~~
 584 ~~except that the credit union may~~ close the account and terminate
 585 the membership of any member whose actions have resulted in any
 586 financial loss to the credit union, or for good cause.

587 Section 14. Subsection (2) of section 657.024, Florida
 588 Statutes, is amended to read:

589 657.024 Membership meetings.--

590 (2) Each member shall have one vote. ~~Mail~~ Ballots may be
 591 distributed in advance to the entire membership as prescribed in
 592 the bylaws. No person shall exercise the vote of any other
 593 member.

594 Section 15. Paragraph (c) of subsection (3) and subsection
 595 (4) of section 657.026, Florida Statutes, are amended to read:

596 657.026 Supervisory or audit committee.--

597 (3) The supervisory or audit committee shall:

598 (c) Submit a report of every required audit or examination
 599 within a reasonable time to the board of directors with a copy
 600 to the office and, ~~depending upon which organization is~~
 601 ~~applicable, a copy to the corporation or~~ the National Credit
 602 Union Administration.

603 (4) The supervisory or audit committee shall notify the
 604 board of directors, the office, and, ~~as applicable, either the~~
 605 ~~corporation or~~ the National Credit Union Administration of any
 606 violation of this chapter, any violation of the certificate of
 607 authorization or bylaws of the credit union, or any practice of

608 the credit union deemed by the supervisory or audit committee to
 609 materially affect or that may potentially materially affect the
 610 safety and soundness of the credit union ~~be unsafe, unsound, or~~
 611 ~~unauthorized.~~

612
 613 For the purposes of this subsection, two-thirds of the members
 614 of the supervisory or audit committee constitutes a quorum.

615 Section 16. Subsection (2) of section 657.027, Florida
 616 Statutes, is amended to read:

617 657.027 Credit committee and credit manager.--

618 (2) In lieu of a credit committee, the board of directors
 619 may provide for a credit manager to approve or disapprove credit
 620 under written conditions prescribed by the board and as provided
 621 in the bylaws. The board of directors may designate and empower
 622 the chief executive officer as the credit manager, or may
 623 authorize the chief executive officer to employ a credit
 624 manager, ~~as provided in the bylaws~~. In the event a credit
 625 manager is designated or employed, the procedures prescribed in
 626 subsection (1) do not apply, and no credit shall be extended
 627 unless approved by the credit manager; except that the credit
 628 manager may appoint one or more loan officers with the power to
 629 approve or disapprove credit, subject to such limitations or
 630 conditions as prescribed by the chief executive officer.

631 Section 17. Subsections (2) and (3) of section 657.028,
 632 Florida Statutes, are amended to read:

633 657.028 Activities of directors, officers, committee
 634 members, employees, and agents.--

635 (2) An elected officer or director or any committee
 636 member, other than ~~the treasurer or~~ the chief executive officer
 637 ~~serving in the capacity of treasurer~~, may not be compensated for
 638 her or his service as such.

639 (3) A person may not serve as an officer, director, or
 640 committee member of a credit union if she or he:

641 (a) Has been convicted of a felony or of an offense
 642 involving dishonesty, a breach of trust, a violation of this
 643 chapter, or fraud, except with the prior approval of the office
 644 ~~upon a showing of rehabilitation;~~

645 (b) Has been adjudicated bankrupt within the previous 7
 646 years;

647 (c) Has been removed by any regulatory agency as a
 648 director, officer, committee member, or employee of any
 649 financial institution, except with the prior approval of the
 650 office ~~upon a showing of rehabilitation and upon showing of~~
 651 ~~ability to be bondable;~~

652 (d) Has performed acts of fraud or dishonesty, or has
 653 failed to perform duties, resulting in a loss which was subject
 654 to a paid claim under a fidelity bond, except with the prior
 655 approval of the office ~~upon a showing of rehabilitation and upon~~
 656 ~~showing of ability to be bondable; or~~

657 (e) Has been found guilty of a violation of s. 655.50,
 658 relating to the Florida Control of Money Laundering in Financial
 659 Institutions Act; chapter 896, relating to offenses related to
 660 financial transactions; or any similar state or federal law.

661 Section 18. Section 657.031, Florida Statutes, is amended
 662 to read:

663 (Substantial rewording of section. See
664 s. 657.031, F.S., for current text.)
665 657.031 Powers of a credit union.--

666 (1) When not in direct conflict with or superseded by
667 specific provisions of the financial institutions codes, the
668 general powers granted to corporations in s. 607.0302 shall
669 extend to credit unions formed under this chapter. This section
670 shall be liberally construed to accomplish the purposes stated
671 herein.

672 (2) Except as provided in s. 607.0304 or specific
673 provisions of the financial institutions codes, the validity of a
674 credit union's action, including, but not limited to, any
675 conveyance, transfer, or encumbrance of real or personal property
676 to or by a credit union, may not be challenged on the ground that
677 the credit union lacks or lacked power to act.

678 (3) The commission may adopt rules to delineate specific
679 credit union powers that are consistent with standard financial
680 institution practices, this chapter, and the financial
681 institutions codes.

682 Section 19. Subsections (5) and (6) of section 657.033,
683 Florida Statutes, are amended, and subsections (7), (8), and (9)
684 are added to said section, to read:

685 657.033 Accounts.--

686 (5) When there has not been any activity generated by the
687 member on the account for 12 24 months, such account shall be
688 considered a dormant account and shall be placed under an
689 accounting control system.

690 (6) If the owner of a dormant account, a person named on
 691 the account, or the beneficiary of the account has not had any
 692 activity with a credit union for 5 7 years and the whereabouts
 693 of those interested parties are unknown to the credit union,
 694 that account is unclaimed or abandoned property and shall be
 695 maintained pursuant to chapter 717.

696 (7) A credit union may receive shares and deposits from
 697 its members and other credit unions. However, a credit union may
 698 not receive shares or deposits from persons, other than credit
 699 unions, who are not members of the credit union, except to a
 700 joint account for which at least one of the account holders is a
 701 member of the credit union.

702 (8) A credit union may participate in systems which allow
 703 the transfer, withdrawal, or deposit of funds of credit unions
 704 or credit union members by automated or electronic means and
 705 hold membership in entities established to promote and
 706 effectuate such systems, provided such participation is not
 707 inconsistent with rules of the commission adopted to improve
 708 service to the members and protect members' funds against
 709 unreasonable risks.

710 (9) A credit union shall obtain and maintain insurance of
 711 accounts through the National Credit Union Administration.

712 Section 20. Section 657.038, Florida Statutes, is amended
 713 to read:

714 657.038 Loan powers.--

715 (1) A credit union may extend credit to members for such
 716 purpose and upon such security and terms as the credit
 717 committee, credit manager, or loan officer approves, pursuant to

718 written loan policies established by the board of directors, or
719 as may otherwise be provided by law.

720 (2)(a) For credit unions that have been opened for 5 years
721 or more, the total unsecured obligations outstanding from any
722 member must not exceed the greater of \$500 or 15 percent of the
723 equity of the credit union. However,

724 ~~(3)~~ the total obligations outstanding from any member must
725 not exceed the greater of \$1,000 or 25 percent of the equity of
726 the credit union. The limitations provided in this subsection do
727 not apply to loans which are fully secured by assignment of
728 shares or deposits in the lending credit union.

729 (b) For credit unions that have been opened for less than
730 5 years, the limitation on total obligations outstanding to any
731 member is 10 percent of the credit union's capital.

732
733 The limitations provided in this subsection do not apply to
734 loans which are fully secured by assignment of shares or
735 deposits in the lending credit union.

736 ~~(4) A member may receive credit in installments or in one~~
737 ~~sum and may pay the whole or any part of his or her indebtedness~~
738 ~~on any day on which the office of the credit union is open for~~
739 ~~business.~~

740 (3)(5) The credit committee or credit manager may approve
741 in advance, upon request of a member, a line of credit, and
742 disbursements may be granted to such member within the limit of
743 such line of credit. When a line of credit has been approved, no
744 additional credit applications are required as long as the
745 aggregate obligation does not exceed the limit of such line of

746 credit; however, no additional disbursements may be made to any
 747 member whose existing extensions of credit are in default or are
 748 subject to adverse classification without receiving current
 749 financial information.

750 (4)~~(6)~~ Loans secured by mortgages on real property must be
 751 made in accordance with written policies of the board of
 752 directors and rules of the commission.

753 (5)~~(7)~~ As used in this section, the term "related
 754 interest" means a person's interest in a partnership as a
 755 general partner, and any limited partnership, corporation, or
 756 other business organization controlled by that person. A limited
 757 partnership, corporation, or other business organization is
 758 controlled by a person who:

759 (a) Owns, controls, or has the power to vote 25 percent or
 760 more of any class of voting securities of any such business
 761 organization;

762 (b) Controls in any manner the election of a majority of
 763 the directors of any such business organization; or

764 (c) Has the power to exercise a controlling influence over
 765 the management or policies of such business organization.

766 (6)~~(8)~~ In computing the total liabilities of any person,
 767 all loans endorsed or guaranteed as to repayment by such person
 768 and by any related interest of such person must be included.

769 (7)~~(9)~~ A loan may ~~not~~ be made to any corporation, ~~except~~
 770 ~~to the Florida Credit Union Guaranty Corporation, Inc., or a~~
 771 ~~corporation~~ in which the credit union holds an equity interest.

772 ~~(8)(10)~~ The loan limitations stated in this section shall
 773 not be enlarged by the provision of any other section of this
 774 chapter.

775 ~~(9)(11)~~ Any approval of extension of credit requiring
 776 approval of the board of directors shall be recorded in the
 777 minutes of the board, including the borrower's account number or
 778 other code, the amount of the loan, the maturity of the loan,
 779 and the general type of security.

780 ~~(10)(12)~~ The commission may adopt rules to provide for
 781 minimum documentation and safe lending procedures necessary to
 782 protect the members' funds.

783 ~~(11)(13)~~ A credit union may participate in extensions of
 784 credit ~~to its members~~ jointly with other credit unions,
 785 corporations, or financial institutions.

786 ~~(12)(14)~~ A credit union may participate in guaranteed loan
 787 programs of the federal and state governments, provided the
 788 borrower is a member of the credit union.

789 ~~(13)(15)~~ If approved by the board of directors, a credit
 790 union may extend credit to other credit unions, ~~or to the~~
 791 ~~corporation,~~ in an amount not greater than 25 percent of the
 792 ~~unimpaired~~ capital of the lending credit union.

793 ~~(14)(16)~~ A credit union may purchase the conditional sales
 794 contracts, notes, and similar instruments of its members,
 795 provided that the credit union could have originally made the
 796 loan ~~to the member~~.

797 (15) A credit union may issue credit cards and debit cards
 798 to allow members to obtain access to their shares, deposits, and
 799 extensions of credit, provided such issuance is not inconsistent

800 with the rules of the commission. The commission, by rule, may
 801 allow the use of devices similar to credit cards and debit cards
 802 to allow members to obtain access to their shares, deposits, and
 803 extensions of credit.

804 Section 21. Subsection (1) of section 657.039, Florida
 805 Statutes, is amended to read:

806 657.039 Loan powers; extension of credit to directors,
 807 ~~officers, committee members,~~ and certain other persons
 808 ~~employees.--~~

809 (1) A credit union may extend credit to its executive
 810 officers, directors, credit manager, members of its supervisory,
 811 audit, and credit committees, ~~and any other person authorized to~~
 812 ~~approve extensions of credit,~~ provided:

813 (a) The extension of credit complies with all requirements
 814 under this chapter with respect to credit extended to other
 815 borrowers and is not on terms more favorable than those extended
 816 to other borrowers.

817 (b) The loan or aggregate of loans to any person or any
 818 related interest of any person covered by this section which
 819 exceeds \$20,000 ~~\$5,000~~, except for share-secured or deposit-
 820 secured credit, is approved in advance by the board of directors
 821 with any interested person abstaining from voting.

822 (c) Approved lines of credit, such as open-end loans, may
 823 be funded without further approval by the board, but all
 824 extensions of credit over \$20,000 ~~\$5,000~~ to such persons must be
 825 reviewed at least annually by the board of directors. Closed-end
 826 loans which have been fully funded do not require annual review.

827 Section 22. Paragraph (i) of subsection (1), subsection
 828 (4), and paragraph (b) of subsection (5) of section 657.042,
 829 Florida Statutes, are amended to read:

830 657.042 Investment powers and limitations.--A credit union
 831 may invest its funds subject to the following definitions,
 832 restrictions, and limitations:

833 (1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.--There is no
 834 limitation with respect to the capital of the investing credit
 835 union on the following investments:

836 (i) Stock of the Federal National Mortgage Association,
 837 Federal Home Loan Bank, or any other similar entity designated
 838 by the office, designed to promote investment in residential
 839 mortgages, which may be purchased and retained as required in
 840 connection with mortgage transactions with the association or
 841 entity.

842 (4) INVESTMENT SUBJECT TO LIMITATION OF ONE PERCENT OF
 843 CAPITAL OF THE CREDIT UNION.--Up to 1 percent of the capital of
 844 the credit union ~~or \$15,000, whichever is greater~~, may be
 845 invested in any of the following:

846 (a) Corporate obligations of any one corporation which is
 847 an affiliate or subsidiary of the credit union or a service
 848 corporation, except that the total investment in all such
 849 corporate obligations shall not exceed 10 percent of the capital
 850 of the credit union.

851 (b) Any capital participation instrument or evidence of
 852 indebtedness issued by the Florida Black Business Investment
 853 Board pursuant to the Florida Small and Minority Business
 854 Assistance Act of 1985.

855 (5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE
 856 CREDIT UNION.--

857 (b) The limitations provided by this subsection may be
 858 exceeded with the prior written approval of the office. The
 859 office shall grant such approval if it is satisfied that:

- 860 1. The proposed investment is necessary.
- 861 2. The amount thereof is commensurate with the size and
 862 needs of the credit union.
- 863 3. The investment will be beneficial to the members.
- 864 4. A reasonable plan is developed to reduce the investment
 865 to limits provided by law.

866 Section 23. Section 657.043, Florida Statutes, is amended
 867 to read:

868 657.043 Reserves.--

869 ~~(1) TRANSFERS TO REGULAR RESERVE. Immediately before~~
 870 ~~paying each dividend, the total of all income for the period~~
 871 ~~shall be determined. From this amount, there shall be set aside~~
 872 ~~sums as a regular reserve in accordance with the following~~
 873 ~~schedule:~~

874 ~~(a) A credit union shall set aside:~~

875 ~~1. Five percent of the total of all income for the period,~~
 876 ~~until the regular reserve equals 6 percent of the risk assets,~~
 877 ~~then,~~

878 ~~2. Two percent of the total of all income for the period,~~
 879 ~~until the regular reserve equals 8 percent of the risk assets.~~

880 ~~(b) Whenever the ratio of regular reserves to risk assets~~
 881 ~~falls below the stated percent, it shall be replenished by~~
 882 ~~regular contributions as provided in paragraph (a).~~

883 ~~(c) The office may decrease the reserve requirements set~~
 884 ~~forth in this subsection when in its opinion such a decrease is~~
 885 ~~necessary to preserve the fiscal soundness of the credit union.~~

886 ~~(1)(2) ALLOWANCE FOR LOAN LOSSES ACCOUNT.--The credit~~
 887 ~~union shall maintain an account for loan and lease losses. The~~
 888 ~~amount in the account must equal the board's estimate of losses~~
 889 ~~in the loan portfolio and be consistent with applicable United~~
 890 ~~States generally accepted accounting principles and industry~~
 891 ~~guidance provided by regulatory agencies or as required by the~~
 892 ~~office rules of the commission. The account must be provided~~
 893 ~~for, before paying a dividend, in the manner provided by rule.~~
 894 ~~This account constitutes part of the regular reserve for the~~
 895 ~~purpose of determining the ratio of regular reserves to risk~~
 896 ~~assets.~~

897 ~~(2)(3) USE OF REGULAR RESERVE.--The regular reserve shall~~
 898 ~~belong to the credit union and shall be used to meet losses. In~~
 899 ~~the event of a decrease, the office may require additional~~
 900 ~~transfers to the regular reserve above the amount required by~~
 901 ~~subsection (1) until the decrease has been restored. The regular~~
 902 ~~reserve may not be decreased without the prior written approval~~
 903 ~~of the office or as provided by rule of the commission.~~

904 ~~(4) RISK ASSETS DEFINED.--The following assets shall be~~
 905 ~~considered risk assets:~~

906 ~~(a) All loans, except:~~

907 ~~1. Loans fully secured by a pledge of shares or deposits~~
 908 ~~in the lending credit union, equal to and maintained to at least~~
 909 ~~the amount of the loan outstanding.~~

910 ~~2. Loans which are purchased from liquidating credit~~
 911 ~~unions and guaranteed by the corporation or insured by the~~
 912 ~~National Credit Union Administration or other insuring agencies.~~

913 ~~3. Investments in or loans to the corporation.~~

914 ~~(b) All investments that have remaining maturities greater~~
 915 ~~than 3 years, unless a specific reserve has been established to~~
 916 ~~mark the investment to current market value.~~

917 ~~(c) Uninsured or nonguaranteed deposits and shares in~~
 918 ~~financial depository institutions, except deposits in the~~
 919 ~~Federal Reserve Bank, the Federal Home Loan Bank, the Southeast~~
 920 ~~Corporate Federal Credit Union, and any other corporate credit~~
 921 ~~union.~~

922 ~~(d) All investments in commercial paper and bonds.~~

923 ~~(e) All investments in banker's acceptances.~~

924 ~~(f) All investments in federal funds.~~

925 ~~(g) All investments that are authorized pursuant to~~
 926 ~~subsection (6) or subsection (7).~~

927 ~~(h) Fixed assets greater than the statutory limit imposed~~
 928 ~~by this chapter, unless a specific reserve has been established~~
 929 ~~for the excess.~~

930 (3)~~(5)~~ ALLOWANCE FOR INVESTMENT LOSSES.--The credit union
 931 may maintain a contra asset account to provide an allowance for
 932 investment losses, which will not be included in the
 933 determination of equity. The account must be maintained
 934 consistent with the rules of the commission.

935 (4)~~(6)~~ SPECIAL RESERVES.--In addition to such regular
 936 reserve, special reserves shall be established:

937 (a) To protect members against losses resulting from
 938 credit extended or from risk assets when required by rule, or
 939 when found by the office, in any special case, to be necessary
 940 for that purpose; or

941 (b) As authorized by the board of directors.

942 (5) BORROWING MONEY.--A credit union may borrow money and
 943 issue evidences of indebtedness for any loan in the usual course
 944 of its business and secure such obligations by mortgage or
 945 pledge of any of its assets. Aggregate borrowings shall not
 946 exceed 50 percent of the capital that is not impaired by losses
 947 of the credit union. However, this percentage limitation shall
 948 not apply to loans from the National Credit Union
 949 Administration.

950 ~~(7) RESERVE FOR CONTINGENCIES.--The board of directors~~
 951 ~~may, after the regular reserve required by this section and~~
 952 ~~rules of the commission has been set aside, transfer a portion~~
 953 ~~of undivided earnings to an auxiliary reserve account to provide~~
 954 ~~for additional possible losses and expenses.~~

955 ~~(8) RESERVES.--The ratio of equity to total assets for~~
 956 ~~each credit union must be maintained at not less than 5 percent.~~
 957 ~~At the end of the calendar quarter when this ratio is determined~~
 958 ~~to be less than 5 percent, the credit union shall, within 60~~
 959 ~~days thereafter, prepare and file with the office for approval a~~
 960 ~~plan to achieve the minimum ratio within 4 years, or such longer~~
 961 ~~period of time approved by the office. Once achieved, each~~
 962 ~~credit union must maintain a ratio of equity to total assets of~~
 963 ~~not less than 5 percent, unless otherwise authorized by the~~
 964 ~~office. The commission, by rule, shall prescribe the~~

965 ~~information, types of restrictions and limitations on~~
 966 ~~operations, reporting requirements, and other criteria that are~~
 967 ~~required to be included in an acceptable plan. An acceptable~~
 968 ~~plan must recognize the unique characteristics and risk~~
 969 ~~differences for the individual credit union.~~

970 ~~(9) GUARANTY ASSISTANCE AGREEMENT. The amount of any~~
 971 ~~liability arising out of a guaranty assistance agreement with~~
 972 ~~the corporation or National Credit Union Administration must be~~
 973 ~~maintained as a reserve and be included in the determination of~~
 974 ~~undivided earnings of the credit union.~~

975 Section 24. Section 657.062, Florida Statutes, is amended
 976 to read:

977 657.062 Conservatorship Assumption of control by guarantor
 978 ~~or insurer.--~~

979 (1) The office may appoint ~~direct the corporation or the~~
 980 National Credit Union Administration as conservator of a credit
 981 union to take possession and, whichever is applicable, to assume
 982 control of the property, assets, and business of its member
 983 credit union and to operate it subject to the directions of the
 984 office whenever:

- 985 (a) ~~Whenever~~ The office finds that the credit union:
- 986 1. Is engaging or has engaged in an unsafe or unsound
 987 practice;
 - 988 2. Is violating or has violated any provision of this
 989 chapter; or
 - 990 3. Is violating or has violated any commission rule,
 991 office order, or written agreement entered into with the office,
 992

993 in such a manner that the credit union is threatened with
 994 imminent insolvency;~~:-~~

995 (b) ~~Whenever~~ A majority of the members of the board of
 996 directors of the credit union have been removed by the office or
 997 the National Credit Union Administration or ~~shall~~ have resigned;
 998 or

999 (c) The credit union is significantly undercapitalized and
 1000 has no reasonable prospect of becoming adequately capitalized.
 1001 The commission may define by rule criteria for determining if a
 1002 credit union is undercapitalized or adequately capitalized. In
 1003 defining such criteria, the commission shall consider the
 1004 definitions contained in Section 216 of The Federal Credit Union
 1005 Act, 12 U.S.C. s. 1790d.

1006 (2) Except when prohibited by federal or state law, in the
 1007 event of conservatorship ~~assumption of control~~, the conservator
 1008 ~~guarantor or insurer~~ may appoint ~~elect~~ the board of directors
 1009 and the operating committees and may, without penalty or
 1010 liability, prepay any deposit accounts; terminate any contracts
 1011 or agreements with employees, independent contractors, or
 1012 consultants; terminate any contract or agreement with any person
 1013 to provide goods, products, or services if the performance of
 1014 such contract would adversely affect the safety or soundness of
 1015 the credit unions ~~or if such contract was entered into in~~
 1016 ~~violation of s. 657.0315(1)~~; and terminate or assign any lease
 1017 for property. The authority of the conservator ~~guarantor or~~
 1018 ~~insurer~~ to continue operation of a credit union shall continue
 1019 for a period not to exceed 180 days, unless extended by the
 1020 office for an additional period or periods not to exceed 180

1021 days each at the request of the conservator ~~guarantor or~~
 1022 ~~insurer~~, or unless involuntary liquidation proceedings have been
 1023 initiated by the office. In the event that the conservator
 1024 ~~guarantor or insurer~~ does assume control pursuant to the
 1025 direction of the office, a meeting of the credit union shall be
 1026 called within 180 days, or within the period of extension as
 1027 approved by the office, for the specific purpose of electing a
 1028 new board of directors, who shall take office when the
 1029 conservator ~~guarantor or insurer~~ surrenders control, or
 1030 considering such other recommendations as the conservator
 1031 ~~guarantor or insurer~~ and the office may make.

1032 Section 25. Subsections (1), (2), and (3) of section
 1033 657.063, Florida Statutes, are amended to read:

1034 657.063 Involuntary liquidation.--

1035 (1) If the office finds that any credit union is ~~bankrupt~~
 1036 ~~or insolvent or imminently insolvent;~~ or is transacting its
 1037 business in an unsound, unsafe, or unauthorized manner such that
 1038 it is threatened with imminent insolvency, and liquidation is in
 1039 the best interest of the members; or is undercapitalized and has
 1040 no reasonable prospect of becoming adequately capitalized, the
 1041 office may, in its discretion, order the credit union placed in
 1042 involuntary liquidation and designate and appoint a liquidator
 1043 to take charge of the assets and affairs of the credit union.
 1044 The order shall set forth the specific findings and reasons for
 1045 the action taken. The commission may define by rule criteria for
 1046 determining if a credit union is undercapitalized or adequately
 1047 capitalized. In defining such criteria, the commission shall

1048 consider the definitions contained in Section 216 of The Federal
 1049 Credit Union Act, 12 U.S.C. s. 1790d.

1050 (2) The liquidator must be appointed by the office. The
 1051 ~~corporation or the National Credit Union Administration,~~
 1052 ~~whichever is applicable,~~ must be given the right of first
 1053 refusal. The office may appoint another entity if refused by the
 1054 primary ~~guarantor or~~ insurer.

1055 (3) Upon appointment and in accordance with the directions
 1056 of the office, the liquidator shall take possession and charge
 1057 of all of the assets, books, and records of the credit union and
 1058 shall take charge of the affairs, business, and operations of
 1059 the credit union and shall have all of the powers of the board
 1060 of directors, credit committee, credit manager, and supervisory
 1061 committee of the credit union. The liquidator shall continue the
 1062 business operation of the credit union for a period not to
 1063 exceed 180 days, subject to the direction of the office. The
 1064 liquidator shall have full authority to make loans and
 1065 investments and to permit deposits to or withdrawals from
 1066 accounts by members, except that during the period of such
 1067 operation by the liquidator, no withdrawal from any account or
 1068 accounts which are not fully insured ~~or guaranteed~~ shall be
 1069 permitted. Except when prohibited by federal or state law, the
 1070 liquidator may, without penalty or liability, prepay any deposit
 1071 accounts; terminate any contracts or agreements with employees,
 1072 independent contractors, or consultants; terminate any contract
 1073 or agreement with any person to provide goods, products, or
 1074 services if the performance of such contract would adversely
 1075 affect the safety or soundness of the credit union ~~that was~~

1076 ~~entered into in violation of s. 657.0315(1) or s. 657.062(2);~~
 1077 and terminate or assign any lease for property. The liquidator
 1078 shall proceed with a liquidation of assets by sale or transfer
 1079 of assets and conversion of assets into cash or liquid
 1080 investments in preparation for distribution to members on
 1081 account of shares and deposits. The liquidator shall have
 1082 specific authority to sell loan assets. The liquidator may enter
 1083 into agreements for the sale or transfer of loans and other
 1084 assets with the assumption of outstanding share and deposit
 1085 accounts, which assumption constitutes full and complete
 1086 distribution to members on account of shares and deposits.

1087 Section 26. Subsections (1), (4), (5), and (7) of section
 1088 657.064, Florida Statutes, are amended to read:

1089 657.064 Voluntary liquidation.--A credit union may elect
 1090 to dissolve voluntarily and liquidate its affairs in the
 1091 following manner:

1092 (1) Before considering any resolution pertaining to
 1093 voluntary liquidation by the board of directors, the credit
 1094 union must inform the office and ~~the corporation or~~ the National
 1095 Credit Union Administration, ~~whichever is applicable,~~ of the
 1096 time and place of the meeting of the board of directors. The
 1097 notification must be transmitted at least 10 ~~5~~ days before the
 1098 board of directors meets.

1099 (4) Upon adoption by the board of directors of a
 1100 resolution recommending that the credit union be voluntarily
 1101 liquidated, the office ~~corporation~~ or the National Credit Union
 1102 Administration, ~~whichever is applicable,~~ may restrict control or
 1103 give directions with respect to the continued business of the

1104 credit union pending consideration of the voluntary liquidation
 1105 by the members. During such period, no member shall withdraw an
 1106 aggregate amount in excess of the insurance or guaranty covered
 1107 by the credit union. No new extensions of credit shall be funded
 1108 during the period between the board of directors' adoption of
 1109 the resolution recommending the voluntary liquidation and the
 1110 membership meeting called to consider the voluntary liquidation,
 1111 except for loans fully secured by a pledge of shares and for the
 1112 funding of outstanding loan commitments approved before the
 1113 board of directors adopts the resolution.

1114 (5) The notice required by subsection (3) shall also be
 1115 mailed to the office and the National Credit Union
 1116 Administration within 5 days after the action of the board of
 1117 directors. Within 10 days after the meeting of the membership,
 1118 the board of directors shall notify the office and ~~the~~
 1119 ~~corporation or~~ the National Credit Union Administration,
 1120 ~~whichever is applicable,~~ in writing of the action taken by the
 1121 members.

1122 (7) The ~~corporation or the~~ National Credit Union
 1123 Administration, ~~whichever is applicable,~~ shall have the right of
 1124 first refusal to be appointed as liquidator of any liquidating
 1125 credit union which it ~~guarantees or~~ insures. The liquidator
 1126 shall have all of the powers provided in s. 657.063 regarding
 1127 involuntary liquidation. If ~~the corporation or the~~ National
 1128 Credit Union Administration declines ~~shall decline~~ to serve as
 1129 liquidator, the board of directors shall appoint a reasonable
 1130 person as liquidator and specify the extent of responsibilities
 1131 and authority delegated to the liquidator.

1132 Section 27. Section 657.065, Florida Statutes, is amended
 1133 to read:

1134 (Substantial rewording of section. See
 1135 s. 657.065, F.S., for current text.)
 1136 657.065 Merger.--

1137 (1) Upon filing of an application with the office by
 1138 constituent credit unions and upon approval by the office,
 1139 credit unions may be merged with a surviving state credit union,
 1140 as prescribed in this code, except the action by a merging
 1141 federal credit union shall be taken in the manner prescribed by,
 1142 and shall be subject to, any limitations or requirements imposed
 1143 by federal laws and regulations. The application shall be
 1144 accompanied by a merger plan and agreement together with a
 1145 certified copy of the authorizing resolutions of the board of
 1146 directors of the constituent credit unions showing approval by a
 1147 majority of the entire board of directors of each credit union,
 1148 as provided in this section, and a nonrefundable application fee
 1149 of \$500. The fee may be waived by the office for a merger
 1150 pursuant to subsection (6).

1151 (2) Nothing in the laws of this state restricts the right
 1152 of a state credit union to merge with a surviving federal credit
 1153 union. In such case, the action to be taken by a merging state
 1154 credit union, and its rights and liabilities and those of its
 1155 members, shall be the same as those prescribed by the applicable
 1156 federal laws or regulations for merging federal credit unions at
 1157 the time of the action.

1158 (3) If the resulting credit union will be a state credit
 1159 union, the constituent merging credit unions shall adopt a

HB 1733

2005

1160 merger plan and agreement stating the method, terms, and
1161 conditions of the merger, including all agreements concerning
1162 the merger. The board of directors of each constituent credit
1163 union shall, by majority vote of the entire board, approve the
1164 merger plan and agreement, which shall contain:

1165 (a) The name and address of the merging and surviving
1166 credit union.

1167 (b) The date, time, and place of the meeting at which the
1168 merger plan and agreement were approved by the merging and the
1169 surviving credit union's boards of directors.

1170 (c) The name and address of the main office of the
1171 surviving credit union and each continuing branch office.

1172 (d) The names, terms, and board positions of the surviving
1173 credit union's board of directors.

1174 (e) The names and title of each executive officer.

1175 (f) A list of any amendments needed to the surviving
1176 credit union's bylaws, if applicable, and attached to the
1177 agreement copies of such amendments.

1178 (g) A statement that the merger and the merger plan and
1179 agreement are subject to approval by office and the National
1180 Credit Union Administration.

1181 (h) Such additional provisions not contrary to law as may
1182 be agreed upon by the constituent credit unions and such other
1183 provisions as the office requires to enable the office to
1184 discharge its duties with respect to the merger.

1185 (4) The office shall approve the application and the
1186 merger plan and agreement if the office finds that:

1187 (a) The surviving credit union's net worth is adequate.

1188 (b) The merger will not impair the ongoing viability of
 1189 the surviving credit union.

1190
 1191 If the office disapproves a merger plan and agreement, the
 1192 office shall state its objections and, the provisions of chapter
 1193 120 notwithstanding, give an opportunity to the merging and
 1194 surviving credit unions to amend the merger plan and agreement
 1195 to eliminate such objections.

1196 (5) Approval by the office, by final order or otherwise,
 1197 of the application and merger plan and agreement shall be deemed
 1198 subject to approval by the members of the merging credit union
 1199 who vote on the merger at a meeting duly called for that
 1200 purpose. Such approval shall be documented by the submission of
 1201 a copy of:

1202 (a) The notice of intent to merge given to the surviving
 1203 credit union.

1204 (b) The notice of the meeting duly called to consider the
 1205 merger to the members of the merging credit union. Such notice
 1206 shall disclose the purpose of the meeting and the date, time,
 1207 and place of the meeting.

1208 (c) The resolution adopted by the membership confirming
 1209 the vote on the merger.

1210
 1211 Unless the approval of the merging credit union has been
 1212 obtained and proper evidence thereof submitted to the office
 1213 within 6 months after the approval by the office, the approval
 1214 by the office of the merger and merger plan and agreement shall
 1215 be deemed to be revoked and terminated; however, the office on

1216 its own motion, or at the request of the merging or surviving
 1217 credit unions for good cause shown, may extend the time for a
 1218 period not to exceed 6 months.

1219 (6) Notwithstanding any other provisions of this chapter
 1220 or of chapter 120, a credit union may merge without the vote of
 1221 the membership when the office determines that the credit union
 1222 is in danger of insolvency or that the credit union is
 1223 significantly undercapitalized, as defined in Section 216 of The
 1224 Federal Credit Union Act, 12 U.S.C. s. 1790d, and the merger
 1225 will enable the credit union to avoid liquidation.

1226 (7) A merger with a resulting state credit union may not
 1227 take place or be effective unless approved by the National
 1228 Credit Union Administration and the office issues a certificate
 1229 of merger. Upon consummation of the merger, the certificate of
 1230 authorization of the merged credit union shall be returned to
 1231 the proper authority to be canceled. Also, at consummation, all
 1232 property and property rights of, and members' interest in, the
 1233 merged credit union shall vest in the surviving credit union
 1234 without deed, endorsement, or other instrument of transfer and
 1235 all debts, obligations, and liabilities of the merged credit
 1236 union shall be assumed by the surviving credit union under the
 1237 certificate of authorization under which the merger was
 1238 effected. All members of the surviving credit union have the
 1239 same rights, privileges, and responsibilities after the merger
 1240 is completed. The certificate of merger must be recorded in the
 1241 public records of all counties in which the merging credit union
 1242 owned any real property at the effective date of the merger.

1243 Section 28. Section 657.066, Florida Statutes, is amended
 1244 to read:

1245 657.066 Conversion from state credit union to federal
 1246 credit union and conversely.--Any credit union organized under
 1247 this chapter may convert into a federal credit union and any
 1248 federal credit union may convert into a credit union organized
 1249 pursuant to this chapter upon approval of the authority under
 1250 the supervision of which the converted credit union will operate
 1251 and upon compliance with applicable laws.

1252 (1) Any action by the board of directors proposing
 1253 conversion shall be by resolution and shall require the
 1254 affirmative vote of an absolute majority of the board of
 1255 directors. ~~Upon adoption of a resolution relating to conversion,~~
 1256 ~~a copy of the resolution shall be mailed to each member,~~
 1257 ~~together with a notice setting forth the time, location, and~~
 1258 ~~purpose of a meeting of the membership which shall be held not~~
 1259 ~~less than 10 nor more than 30 days following the mailing of the~~
 1260 ~~notice.~~

1261 ~~(2) A ballot allowing an affirmative or negative vote on~~
 1262 ~~the proposed conversion shall also be mailed to each member. Any~~
 1263 ~~ballot received by the credit union prior to the meeting called~~
 1264 ~~to consider the conversion shall be counted along with the votes~~
 1265 ~~cast at the meeting. Each member shall have but one vote. A~~
 1266 ~~majority of the votes cast by the members shall be required to~~
 1267 ~~approve the conversion.~~

1268 (2)(3) Within 10 days after the approval of the
 1269 ~~membership,~~ The board of directors shall cause to be transmitted
 1270 to the authority under the supervision of which the converted

HB 1733

2005

1271 credit union will operate a copy of the resolution adopted by
1272 the board of directors and a conversion application ~~approved by~~
1273 ~~the membership.~~

1274 ~~(3)~~(4) Upon the written approval of the authority under
1275 the supervision of which the converting credit union is to
1276 operate, the converting credit union shall become a credit union
1277 under this chapter or under the laws of the United States, as
1278 the case may be, and thereupon all assets shall become the
1279 property of the converted credit union, subject to all existing
1280 liabilities against the credit union. All shares and deposits
1281 shall remain intact. Any federal credit union seeking to convert
1282 to a state-chartered credit union shall pay a nonrefundable
1283 filing fee of \$500. The office may conduct an examination of any
1284 converting federal credit union before approving the conversion
1285 and the converting credit union shall pay a nonrefundable
1286 examination fee as provided in s. 655.411(1)(b).

1287 (4) Upon the approval of the authority under the
1288 supervision of which the converted credit union will operate, a
1289 copy of the resolution shall be provided to each member,
1290 together with a notice setting forth the time, location, and
1291 purpose of a meeting of the membership which shall be held not
1292 less than 10 or more than 30 days following the transmission of
1293 the notice.

1294 (5) A ballot allowing an affirmative or negative vote on
1295 the proposed conversion shall also be provided to each member.
1296 Any ballot received by the credit union prior to the meeting
1297 called to consider the conversion shall be counted along with
1298 the votes cast at the meeting. Each member shall have only a

1299 single vote. A majority of the votes cast by the members shall
 1300 be required to approve the conversion.

1301 (6) Within 10 days after the approval by the membership,
 1302 the board of directors shall cause to be transmitted to the
 1303 authority under the supervision of which the converted credit
 1304 union will operate a copy of the resolution adopted by the board
 1305 of directors and approved by the membership with confirmation of
 1306 the vote.

1307 (7)(5) Every conversion must be completed within 90 days
 1308 after the approval of the authority under the supervision of
 1309 which the converted credit union will operate. Upon receiving
 1310 its certificate of authorization or charter from the authority
 1311 under the supervision of which the converted credit union will
 1312 operate, the old certificate of authorization or charter shall
 1313 be returned to the proper authority and shall be canceled.

1314 (8)(6) In consummation of the conversion, the old credit
 1315 union may execute, acknowledge, and deliver to the newly
 1316 chartered credit union the instruments of transfer necessary to
 1317 accomplish the transfer of any property and all right, title,
 1318 and interest therein.

1319 Section 29. Subsection (7) of section 658.43, Florida
 1320 Statutes, is amended to read:

1321 658.43 Approval by office; valuation of assets; emergency
 1322 action.--

1323 ~~(7) Notwithstanding any other provisions of the financial~~
 1324 ~~institutions codes or of chapter 120, if the office or the~~
 1325 ~~appropriate federal regulatory agency finds that immediate~~
 1326 ~~action is necessary in order to prevent the probable failure of~~

1327 ~~one or more banks, associations, or trust companies, which in~~
 1328 ~~this subsection may be referred to as a "failing financial~~
 1329 ~~entity," the office shall have the power, with the concurrence~~
 1330 ~~of the appropriate federal regulatory agency in the case of any~~
 1331 ~~bank or association the deposits of which are insured by the~~
 1332 ~~Federal Deposit Insurance Corporation, to issue an emergency~~
 1333 ~~order authorizing:~~

1334 ~~(a) The merger of any such failing financial entity with a~~
 1335 ~~state bank;~~

1336 ~~(b) The merger of any such failing financial entity with a~~
 1337 ~~state trust company;~~

1338 ~~(c) Any state bank to acquire assets and assume~~
 1339 ~~liabilities of any such failing financial entity, including all~~
 1340 ~~rights, powers, and responsibilities as fiduciary in instances~~
 1341 ~~where the failing financial institution is actively engaged in~~
 1342 ~~the exercise of trust powers;~~

1343 ~~(d) Any state trust company to acquire assets and assume~~
 1344 ~~liabilities of any such failing trust company and rights,~~
 1345 ~~powers, and responsibilities as fiduciary of such failing trust~~
 1346 ~~company;~~

1347 ~~(e) The conversion of any such failing financial entity~~
 1348 ~~into a state bank or trust company;~~

1349 ~~(f) The chartering of a new state bank or state~~
 1350 ~~association to acquire assets and assume liabilities of any such~~
 1351 ~~failing financial entity and to assume rights, powers, and~~
 1352 ~~responsibilities as fiduciary in cases where such failing~~
 1353 ~~financial entity is engaged in the exercise of trust powers; or~~

1354 ~~(g) The chartering of a new state trust company to acquire~~
 1355 ~~assets and assume liabilities and rights, powers, and~~
 1356 ~~responsibilities as fiduciary of such failing trust company.~~

1357
 1358 ~~Any such finding by the office shall be based upon reports~~
 1359 ~~furnished to it by a state bank, association, or trust company~~
 1360 ~~examiner or by a federal bank or association examiner or upon~~
 1361 ~~other evidence from which it is reasonable to conclude that any~~
 1362 ~~such bank, association, or trust company is insolvent or is~~
 1363 ~~threatened with imminent insolvency. The office may disallow~~
 1364 ~~illegally obtained currency, monetary instruments, funds, or~~
 1365 ~~other financial resources from the capitalization requirements~~
 1366 ~~of this section. The stockholders of a failing bank,~~
 1367 ~~association, or trust company that is acquired by another bank~~
 1368 ~~or trust company pursuant to this subsection shall be entitled~~
 1369 ~~to the same procedural rights and to compensation for the~~
 1370 ~~remaining value of their shares as is provided for dissenters in~~
 1371 ~~s. 658.44, except that they shall have no right to vote against~~
 1372 ~~the transaction. Any transaction authorized by this subsection~~
 1373 ~~may be accomplished through the organization of a successor~~
 1374 ~~institution.~~

1375 Section 30. Sections 657.0315, 657.051, 657.055, and
 1376 657.068, Florida Statutes, are repealed.

1377 Section 31. This act shall take effect July 1, 2005.