

HOUSE BILL REPORT

EHB 2830

As Passed House:
February 15, 2010

Title: An act relating to credit union regulatory enforcement powers.

Brief Description: Addressing credit union regulatory enforcement powers.

Sponsors: Representatives Simpson, Bailey, Kirby, Kelley, Rodne and Nelson; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/21/10, 1/26/10 [DP].

Floor Activity:

Passed House: 2/15/10, 98-0.

Brief Summary of Engrossed Bill

- Modifies the regulation of credit unions in the areas of examination and supervision, penalties, and corporate governance.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 9 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Santos and Simpson.

Staff: Alison Hellberg (786-7152).

Background:

Credit unions doing business in Washington can be chartered by the state or federal government. The National Credit Union Administration regulates federally-chartered credit unions. The Department of Financial Institutions (Department) regulates state-chartered credit unions. State law provides for the organization, regulation, and examination of state credit unions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Examination and Supervision.

The Department is required to examine and investigate the affairs of credit unions on a regular basis. The Department may compel the production of records and the testimony of witnesses as necessary, in connection with examinations.

The Department may issue and serve a credit union director, supervisory committee member, officer, or employee with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the credit union, if:

- the person has committed a material violation of law or an unsafe or unsound practice;
- the credit union has suffered or is likely to suffer substantial financial loss or other damage, or the interests of the credit union's share account holders and depositors could be seriously prejudiced by reason of the violation or practice; and
- the violation or practice involves personal dishonesty, recklessness, or incompetence.

The Department may also issue and serve a credit union with a written notice of charges and intent to issue a cease and desist order, if the credit union has committed or is about to commit a material violation of law or an unsafe or unsound practice. The order may require the credit union and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

In certain situations, the Department may place a credit union under supervisory direction, or appoint a conservator, liquidating agent, or receiver, if the credit union:

- consents to the action;
- has failed to comply with the requirements of the Department while the credit union is under supervisory direction;
- has committed or is about to commit a material violation of law or an unsafe or unsound practice, and such violation or practice has caused or is likely to cause an unsafe or unsound condition at the credit union; or
- is in an unsafe or unsound condition.

Prohibited Acts.

It is a misdemeanor for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate, or consent to a violation of, the provisions regulating credit unions. It is a class C felony for a person to knowingly:

- subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;
- make a false statement or entry in a report required to be made to the Department; or
- exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

Corporate Governance.

State credit unions are governed by a board of directors. By statute, board members are deemed to stand in a fiduciary relationship to the credit union and have specified duties stemming from this relationship. A "supervisory committee" monitors both the financial condition of the credit union and the decisions of the board. Supervisory committees must:

- keep fully informed as to the financial condition of the credit union and the decisions of the credit union's board;
- perform or arrange for a complete annual audit of the credit union and a verification of its members' accounts; and
- report its findings and recommendations to the board and make an annual report to members at each annual membership meeting.

Summary of Engrossed Bill:

Examination and Supervision.

Numerous changes are made to the provisions regarding examination and supervision of credit unions. The entities that the Department may examine and supervise are expanded. The Department may examine and investigate:

- subsidiaries of a non-public organization in which a credit union has a material investment;
- any tier subsidiary of a credit union service organization; and
- an entity that provides alternative share insurance.

The Director of the Department of Financial Institutions (Director) may conduct administrative hearings regarding removal or prohibition orders and temporary cease and desist orders. The Director may also appoint conservators for a credit union. The Director, the Department, and its employees are immune from liability for actions taken in regard to a conservatorship or receivership. Conservators and receivers may cancel any executory contract or lease within six months of becoming aware of the contract or lease.

The Director may issue and serve an order suspending a person from further participation in any manner in the conduct of the affairs of a credit union, if the Director determines that such an action is necessary for the protection of the credit union or the interests of the credit union members. The suspension lasts until administrative proceedings are completed, or the Thurston County Superior Court (Court) issues a stay. If a Department action causes a board of directors of a credit union to not have enough directors for a quorum, the board may exercise its authority with the remaining members. If the Department removes all of the directors, the Department must appoint temporary directors.

It is clarified that credit unions must comply with United States' generally accepted accounting principles. The venue for all temporary cease and desist orders and receivership actions is the Court.

Prohibited Acts and Penalties.

In addition to the other prohibited acts, it is also a misdemeanor for a person to knowingly make or disseminate a false report or other misrepresentation about the financial condition of a credit union.

The Director may assess civil fines of up \$10,000 to a credit union for violation of:

- a material provision regulating credit unions;
- a final or temporary order, including a cease and desist, suspension, removal, or prohibition order;
- a supervisory agreement;

- a condition imposed in writing in connection with the grant of any application or other request; or
- any other written agreement entered into with the Director.

A continuing violation is considered a single violation. The Department is given rule-making authority to implement these provisions.

Definitions.

Some definitions are modified and others are added. The definition of "material violation of law" is modified to include violation of a supervisory agreement or breach of fiduciary duties by a member of a board of directors, an officer, or a member of a supervisory committee. A definition for "significantly undercapitalized" is included to mean a net worth to total assets ratio of less than 4 percent. Significant undercapitalization is considered an unsafe or unsound condition.

Corporate Governance.

Members of supervisory committees have the same fiduciary duties as directors, board officers, and senior operating officers of a credit union. Directors may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- officers or employees of the credit union who are reliable and competent in the matters presented;
- legal counsel, public accountants, or other persons as to matters within the person's professional or expert competence; or
- a committee of the board of directors which merits confidence.

A director is not liable for any action taken as a director, or any failure to take any action, if the director complied with the requirements regarding his or her fiduciary relationship.

Credit Union Organization.

Once a credit union is approved by the Department, the Department delivers a copy of the credit union's approved articles of incorporation and the state filing fee, paid by the Department, to the Secretary of State.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill has no fiscal impact because it is about clarifying regulatory authority and improving enforcement. Credit unions offer mostly consumer services, so as the economy has worsened, credit unions have begun to have problems. The laws regulating credit unions have not been updated for nine years, and as the economy changes, it is time to modernize the Department's regulatory toolbox. The Department has been communicating with other states for ideas on how to revise these laws. There was also tremendous stakeholder work and full agreement on the bill.

While 2009 was a tough year for credit unions, 2010 will be worse, and things will not start improving until 2011. In the past, stronger credit unions have been willing to step forward and merge with the weaker ones. It is becoming increasingly difficult to find strong credit unions to step forward, so it is necessary to strengthen provisions regarding conservatorship and receivership.

The bill has several highlights. This will allow the Department to intervene earlier in a manner comparable the National Credit Union Administration's authority. It strengthens the fiduciary duties of directors and improves the ability to suspend those within the credit unions who are committing fraud. The bill also improves the cease and desist order process and allows the Department to impose civil fines. The bill protects the confidentiality of regulatory actions, which allows for more cooperation before a credit union experiences serious problems.

(With concerns) The economic issues of the past few years and the economic situation of financial institutions are important to citizens and the media. While it is proper to keep some of the information confidential, the consent orders and temporary orders should not be exempt from disclosure. The public should know what actions the agency is taking, even if it does not know the numbers and other information behind the actions. This is not an issue of cooperation. The Department regulates credit unions. They have to turn over this information to the Department. Financial institutions have not been going down because information has been public. They have been going down because of larger issues in the economy.

(Opposed) None.

Persons Testifying: (In support) Representative Simpson, prime sponsor; and Linda Jekel, Department of Financial Institutions.

(With concerns) Rowland Thompson, Allied Daily Newspapers and Washington Newspaper Publishers.

Persons Signed In To Testify But Not Testifying: None.