



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CREDIT UNIONS

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April 12, 2010

TO: Washington State-Chartered Credit Unions

FROM: Linda K. Jekel, Director of Credit Unions

SUBJECT: DCU Issues Summary of 2010 Bill (EHB 2830)

**DCU Interpretive Letter I-10-02**

**Summary**

This interpretive letter is being issued by the Division of Credit Unions to provide a summary of the amended Washington State Credit Unions Act, EHB 2830. Attached to the interpretive letter is a copy of the actual EHB 2830 (Chapter 87, Laws of 2010), RCW 31.12. This Bill became effective March 17, 2010.

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## **Definitions:**

### **“Department”** Page 2; line 12:

“Department” was never defined in the Credit Union Act (“the Act”). For the purposes of the Act, the department means the Department of Financial Institutions (“DFI”).

### **“Insolvency”** Page 2; lines 23-30

The Act defines insolvency as where a credit union’s assets are less than its obligation to its share account holders, depositors, creditors, etc. The prior version of the Act calculated assets and liabilities according to “generally accepted accounting principles.” The section is clarified to require that assets and liabilities are determined according to United States generally accepted accounting principles.

### **“Material violation of law”** Page 2; line 33 to Page 3; line 13

A material violation of law under the Act includes violations of material provisions of laws, cease and desist orders, conditions imposed in writing by the director, and written agreements entered into with the director. The definition is clarified to include violations of provisions in supervisory agreements, breaches of fiduciary duty to the credit union by officers, directors, or members of a supervisory committee.

### **“Significantly undercapitalized”** Page 3; lines 34-35

A new definition is created for “significantly undercapitalized.” A credit union is defined as significantly undercapitalized if its net worth-to-total assets ratio is less than 4 percent.

### **“Unsafe or unsound condition”** Page 4; lines 1-8

The definition of unsafe or unsound condition is expanded to include significantly undercapitalization.

## **Filing Fees**

### **Filing fees:** Page 4; lines 15-33

The current law directs DFI to deliver a new credit union’s articles of incorporation to the Secretary of State and requires that the new credit union separately pay the \$20 filing fee. The change aligns the RCW with DFI’s existing practice, where DFI simultaneously pays the filing fee (currently ranging from \$40 to \$60) and delivers the articles of incorporation to the Secretary of State.

## **Fiduciary Changes**

**Inclusion of supervisory committee members:** Page 4; line 36 to page 5, line 8

Supervisory committee members are subject to the same fiduciary duties as directors, board officers, and senior operating officers. Fiduciary obligations are now categorized as a duty rather than a relationship.

**Defenses to breach of fiduciary duty:** Page 5; lines 9-27

Directors are entitled to rely on information, opinions, reports, or statements if prepared by specified individuals, including employees, attorneys, accountants, and board committees the director does not serve on. This defense does not apply if the director has reason to doubt or disbelieve the information received from the specified party.

A director is not liable for breach of fiduciary duties for actions taken as a director if he or she complies with this section.

These are consistent with the Washington Business Corporation Act, see RCW 23B.08.300.

## **Examination and Enforcement Powers**

**Collection of fines:** Page 6; line 1

DFI is permitted to collect fines from credit unions.

**Subsidiaries:** Page 7; line 10

DFI is authorized to examine and investigate subsidiaries of non-publicly held organizations with material investments from credit unions, any tier subsidiary of a credit union service organization (CUSO), and any entity providing alternative share insurance to a credit union.

**Removal of persons from credit union activities:** Page 10; line 25 to page 11; line 5

DFI is authorized to remove a person for cause from participating in the business of a credit union doing business in Washington. The reasons a person may be removed from the business of a credit union are clarified to require: (1) *either* a material violation of law *or* a practice involving personal dishonesty, recklessness, or incompetence, and (2) injury or prejudice to the credit union or its members. Prior law required injury or prejudice to the credit union or its members, and *both* a material violation of law *and* a practice involving personal dishonesty, recklessness, or incompetence.

**Prohibited acts:** Page 11; lines 8-19

DFI is currently authorized to issue a notice of charges and intent to issue a cease and desist order to serve on a credit union. This change permits the director to issue and serve such notices on any entity regulated by the Act, not just credit unions. This includes subsidiaries, CUSOs, and alternative share insurance companies.

**Civil money fines:** Page 15; lines 19-37

DFI is authorized to levy civil money fines to credit unions of up to \$10,000 per violation for violations of various laws, regulations, orders, and agreements with the director. These include: material violations of the Act or related rules or violation of any order, supervisory agreement, a condition imposed in writing in granting an application, or other written agreement with the director.

**Suspension from participation in the affairs of a credit union:** Page 16; lines 1-27

DFI is authorized to suspend a person from participation in the affairs of a credit union while an investigation is undertaken. The suspended person has ten days to seek a court injunction preventing the suspension, and DFI may similarly seek a court injunction if it believes the suspension is likely to be violated. After completing the investigation, DFI would hold an administrative hearing for removal under RCW 31.12.575 or cancel the suspension.

**Confidentiality**

**Ownership of examination records:** Page 9; lines 25-27

Reports provided to other regulatory entities or examined credit unions remain the property of DFI, and remain confidential. This will not change DFI's existing practices.

**Service of Process/Venue**

**Venue for cease-and-desist orders:** Page 12; lines 13-14

For purposes of issuing cease-and-desist orders, the principle place of business for a foreign or out-of-state credit union is defined as Thurston County. DFI may serve cease and desist orders on such credit unions in Thurston County Court.

**Venue for receiverships:** Page 14; lines 27-28

For purposes of receivership, the principle place of business for a foreign or out-of-state credit union is Thurston County. DFI and a credit union receiver for such credit unions may take actions in Thurston County Court.

**Venue for suspension orders:** Page 16; lines 26-27

For purposes of seeking an injunction against suspension, the principle place of business of a foreign or out-of-state credit union is Thurston County. If a person suspended from participation in the affairs of a foreign or out-of-state credit union wishes to seek an injunction against a suspension, he or she must do so in Thurston County Court.

**Delegation**

**Delegation of cease-and-desist administrative hearing authority:** Page 12; lines 19-20

The director or director's designee may conduct removal and cease-and-desist notice administrative hearings.

**Delegation of conservator hearing authority:** Page 12; lines 29-30

The director or director's designee may conduct the hearing to appoint a conservator for a credit union.

**False Information**

**Knowingly making or disseminating a false report or other misrepresentation on the financial condition of a credit union:** Page 15; lines 4-6

It is a misdemeanor to knowingly make or disseminate a false report or other misrepresentation about the financial condition of any credit union.

**Receivership/Conservatorship**

**Conservatorship liability shield for DFI, employees, and conservators:** Page 13; lines 24-28

The director, DFI, DFI employees, and third-party conservators are not liable for actions taken under the conservatorship provisions of the Act. DFI's funds may not be required to be expended.

**Receivership liability shield for DFI, employees, and receivers:** Page 14; lines 12-17

The director, DFI, DFI employees, and third-party receivers are not liable for actions taken under the receivership provisions of the Act. DFI's funds may not be required to be expended.

**Executory contracts in receivership/conservatorship:** Page 16; line 28 to page 17; line 3

Upon taking possession through conservatorship or receivership, the conservator or receiver may terminate or adopt any executory contract, including leases, within six months of being

made aware of the contract. Any damages clause in a contract terminated under this section is ineffective. Neither DFI nor the conservator or receiver, and credit union are liable for damages.

### **Credit Union Governance**

**DFI powers when board members are removed:** Page 17; lines 4-15

If DFI's removal of directors creates a lack of a board quorum, all powers of the board vest in the remaining director or directors until a quorum again exists. If DFI removes all members of a board of directors, it may appoint temporary directors until new directors are appointed or elected.

### **Technical Provisions**

**Severability:** Page 17; lines 16-19

If any part of the Act is deemed invalid, the remainder is still effective.

**Emergency clause:** Page 17; lines 20-23

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2830

Chapter 87, Laws of 2010

61st Legislature  
2010 Regular Session

CREDIT UNIONS--REGULATORY AUTHORITY AND ENFORCEMENT

EFFECTIVE DATE: 03/17/10

Passed by the House February 15, 2010  
Yeas 98 Nays 0

FRANK CHOPP

\_\_\_\_\_  
Speaker of the House of Representatives

Passed by the Senate March 3, 2010  
Yeas 45 Nays 0

BRAD OWEN

\_\_\_\_\_  
President of the Senate

Approved March 17, 2010, 2:00 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 2830 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
Chief Clerk

FILED

March 17, 2010

Secretary of State  
State of Washington

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ENGROSSED HOUSE BILL 2830

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Passed Legislature - 2010 Regular Session

State of Washington                      61st Legislature                      2010 Regular Session

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

Read first time 01/14/10. Referred to Committee on Financial  
Institutions & Insurance.

1            AN ACT Relating to credit union regulatory enforcement powers;  
2 amending RCW 31.12.005, 31.12.085, 31.12.267, 31.12.516, 31.12.545,  
3 31.12.565, 31.12.569, 31.12.575, 31.12.585, 31.12.595, 31.12.625,  
4 31.12.651, 31.12.671, 31.12.674, and 31.12.850; adding new sections to  
5 chapter 31.12 RCW; prescribing penalties; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            **Sec. 1.** RCW 31.12.005 and 2001 c 83 s 1 are each amended to read  
8 as follows:

9            Unless the context clearly requires otherwise, as used in this  
10 chapter:

11            (1) "Board" means the board of directors of a credit union.

12            (2) "Board officer" means an officer of the board elected under RCW  
13 31.12.265(1).

14            (3) "Branch" of a credit union, out-of-state credit union, or  
15 foreign credit union means any facility that meets all of the following  
16 criteria:

17            (a) The facility is a staffed physical facility;

18            (b) The facility is owned or leased in whole or part by the credit  
19 union or its credit union service organization; and

1 (c) Deposits and withdrawals may be made, or shares purchased,  
2 through staff at the facility.

3 (4) "Capital" means a credit union's reserves, undivided earnings,  
4 and allowance for loan and lease losses, and other items that may be  
5 included under RCW 31.12.413 or by rule or order of the director.

6 (5) "Credit union" means a credit union organized and operating  
7 under this chapter.

8 (6) "Credit union service organization" means an organization that  
9 a credit union has invested in pursuant to RCW 31.12.436(8), or a  
10 credit union service organization invested in by an out-of-state,  
11 federal, or foreign credit union.

12 (7) "Department" means the department of financial institutions.

13 (8) "Director" means the director of financial institutions.

14 ~~((+8))~~ (9) "Federal credit union" means a credit union organized  
15 and operating under the laws of the United States.

16 ~~((+9))~~ (10) "Financial institution" means any commercial bank,  
17 trust company, savings bank, or savings and loan association, whether  
18 state or federally chartered, and any credit union, out-of-state credit  
19 union, or federal credit union.

20 ~~((+10))~~ (11) "Foreign credit union" means a credit union organized  
21 and operating under the laws of another country or other foreign  
22 jurisdiction.

23 ~~((+11))~~ (12) "Insolvency" means:

24 (a) If, under United States generally accepted accounting  
25 principles, the recorded value of the credit union's assets are less  
26 than its obligations to its share account holders, depositors,  
27 creditors, and others; or

28 (b) If it is likely that the credit union will be unable to pay its  
29 obligations or meet its share account holders' and depositors' demands  
30 in the normal course of business.

31 ~~((+12))~~ (13) "Loan" means any loan, overdraft line of credit,  
32 extension of credit, or lease, in whole or in part.

33 ~~((+13))~~ (14) "Material violation of law" means:

34 (a) If the credit union or person has violated a material provision  
35 of:

36 (i) Law;

37 (ii) Any cease and desist order issued by the director;

1 (iii) Any condition imposed in writing by the director in  
2 connection with the approval of any application or other request of the  
3 credit union; or

4 (iv) Any supervisory agreement, or any other written agreement  
5 entered into with the director;

6 (b) If the credit union or person has concealed any of the credit  
7 union's books, papers, records, or assets, or refused to submit the  
8 credit union's books, papers, records, or affairs for inspection to any  
9 examiner of the state or, as appropriate, to any examiner of the  
10 national credit union administration; or

11 (c) If (~~the person~~) a member of a credit union board of directors  
12 or supervisory committee, or an officer of a credit union, has breached  
13 his or her fiduciary duty to the credit union.

14 (~~(14)~~) (15) "Membership share" means an initial share that a  
15 credit union may require a person to purchase in order to establish and  
16 maintain membership in a credit union.

17 (~~(15)~~) (16) "Net worth" means a credit union's capital, less the  
18 allowance for loan and lease losses.

19 (~~(16)~~) (17) "Operating officer" means an employee of a credit  
20 union designated as an officer pursuant to RCW 31.12.265(2).

21 (~~(17)~~) (18) "Organization" means a corporation, partnership,  
22 association, limited liability company, trust, or other organization or  
23 entity.

24 (~~(18)~~) (19) "Out-of-state credit union" means a credit union  
25 organized and operating under the laws of another state or United  
26 States territory or possession.

27 (~~(19)~~) (20) "Person" means an organization or a natural person  
28 including, but not limited to, a sole proprietorship.

29 (~~(20)~~) (21) "Principally" or "primarily" means more than one-  
30 half.

31 (~~(21)~~) (22) "Senior operating officer" includes:

32 (a) An operating officer who is a vice president or above; and

33 (b) Any employee who has policy-making authority.

34 (~~(22)~~) (23) "Significantly undercapitalized" means a net worth to  
35 total assets ratio of less than four percent.

36 (24) "Small credit union" means a credit union with up to ten  
37 million dollars in total assets.

1       (~~(+23)~~) (25) "Unsafe or unsound condition" means, but is not  
2 limited to:

3       (a) If the credit union is insolvent;

4       (b) If the credit union has incurred or is likely to incur losses  
5 that will deplete all or substantially all of its net worth; (~~(or)~~)

6       (c) If the credit union is in imminent danger of losing its share  
7 and deposit insurance or guarantee; or

8       (d) If the credit union is significantly undercapitalized.

9       (~~(+24)~~) (26) "Unsafe or unsound practice" means any action, or  
10 lack of action, which is contrary to generally accepted standards of  
11 prudent operation, the likely consequences of which, if continued,  
12 would be abnormal risk of loss or danger to a credit union, its  
13 members, or an organization insuring or guaranteeing its shares and  
14 deposits.

15       **Sec. 2.** RCW 31.12.085 and 2001 c 83 s 3 are each amended to read  
16 as follows:

17       (1) Upon approval under RCW 31.12.075(2), the director shall  
18 deliver a copy of the articles of incorporation to the secretary of  
19 state for filing. Upon receipt of the approved articles of  
20 incorporation (~~(and a twenty-dollar filing fee)~~) provided by the  
21 applicants, and the secretary of state filing fee paid by the  
22 department, the secretary of state shall file the articles of  
23 incorporation.

24       (2) Upon filing of the approved articles of incorporation by the  
25 secretary of state, the persons named in the articles of incorporation  
26 and their successors may conduct business as a credit union, having the  
27 powers, duties, and obligations set forth in this chapter. A credit  
28 union may not conduct business until the articles have been filed by  
29 the secretary of state.

30       (3) A credit union shall organize and begin conducting business  
31 within six months of the date that its articles of incorporation are  
32 filed by the secretary of state or its charter is void. However, the  
33 director may grant extensions of the six-month period.

34       **Sec. 3.** RCW 31.12.267 and 2001 c 83 s 9 are each amended to read  
35 as follows:

36       (1) Directors, board officers, supervisory committee members, and

1 senior operating officers (~~(are deemed to stand in)~~) owe a fiduciary  
2 (~~(relationship)~~) duty to the credit union, and must discharge the  
3 duties of their respective positions:

4 ~~((1))~~ (a) In good faith;

5 ~~((2))~~ (b) With the care an ordinarily prudent person in a like  
6 position would exercise under similar circumstances; and

7 ~~((3))~~ (c) In a manner the director or officer reasonably believes  
8 to be in the best interests of the credit union.

9 (2) In discharging the duties of a director, a director is entitled  
10 to rely on information, opinions, reports, or statements, including  
11 financial statements and other financial data, if prepared or presented  
12 by:

13 (a) One or more officers or employees of the credit union whom the  
14 director reasonably believes to be reliable and competent in the  
15 matters presented;

16 (b) Legal counsel, public accountants, or other persons as to  
17 matters the director reasonably believes are within the person's  
18 professional or expert competence; or

19 (c) A committee of the board of directors of which the director is  
20 not a member if the director reasonably believes the committee merits  
21 confidence.

22 (3) A director is not acting in good faith if the director has  
23 knowledge concerning the matter in question that makes reliance  
24 otherwise permitted by subsection (2) of this section unwarranted.

25 (4) A director is not liable for any action taken as a director, or  
26 any failure to take any action, if the director performed the duties of  
27 the director's office in compliance with this section.

28 **Sec. 4.** RCW 31.12.516 and 2001 c 83 s 26 are each amended to read  
29 as follows:

30 (1) The powers of supervision and examination of credit unions and  
31 other persons subject to this chapter and chapter 31.13 RCW are vested  
32 in the director. The director shall require each credit union to  
33 conduct business in compliance with this chapter and may require each  
34 credit union to conduct business in compliance with other state and  
35 federal laws that apply to credit unions. The director has the power  
36 to commence and prosecute actions and proceedings, to enjoin

1 violations, and to collect sums, including fines, due the state of  
2 Washington from a credit union.

3 (2) The director may adopt such rules as are reasonable or  
4 necessary to carry out the purposes of this chapter and chapter 31.13  
5 RCW. Chapter 34.05 RCW will, whenever applicable, govern the rights,  
6 remedies, and procedures respecting the administration of this chapter.

7 (3) The director may by rule provide appropriate relief for small  
8 credit unions from requirements under this chapter or rules of the  
9 director. However, small credit unions must still comply with RCW  
10 31.12.408.

11 (4) The director shall have the power and broad administrative  
12 discretion to administer and interpret the provisions of this chapter  
13 and chapter 31.13 RCW, to facilitate the delivery of financial services  
14 to the members of a credit union.

15 (5) Nonfederally insured credit unions, nonfederally insured out-  
16 of-state credit unions, and nonfederally insured foreign credit unions  
17 operating in this state as permitted by RCW 31.12.408 and 31.12.471, as  
18 applicable, must comply with safety and soundness requirements  
19 established by the director.

20 (6) The director may charge fees to credit unions and other persons  
21 subject to examination and investigation under this chapter and chapter  
22 31.13 RCW, and to other parties where the division contracts out its  
23 services, in order to cover the costs of the operation of the division  
24 of credit unions, and to establish a reasonable reserve for the  
25 division. The director may waive all or a portion of the fees.

26 **Sec. 5.** RCW 31.12.545 and 2001 c 83 s 27 are each amended to read  
27 as follows:

28 (1) The director shall make an examination and investigation into  
29 the affairs of each credit union at least once every eighteen months,  
30 unless the director determines with respect to a credit union, that a  
31 less frequent examination schedule will satisfactorily protect the  
32 financial stability of the credit union and will satisfactorily assure  
33 compliance with the provisions of this chapter.

34 (2) In regard to credit unions, and out-of-state and foreign credit  
35 unions permitted to operate a branch in Washington pursuant to RCW  
36 31.12.471, the director:

1 (a) Shall have full access to the credit union's books and records  
2 and files, including but not limited to computer files;

3 (b) May appraise and revalue the credit union's investments; and

4 (c) May require the credit union to charge off or set up a special  
5 reserve for loans and investments.

6 (3) The director may make an examination and investigation into the  
7 affairs of:

8 (a) An out-of-state or foreign credit union permitted to operate a  
9 branch in Washington pursuant to RCW 31.12.471;

10 (b) A nonpublicly held organization, or its subsidiary, in which a  
11 credit union has a material investment;

12 (c) A publicly held organization the capital stock or equity of  
13 which is controlled by a credit union;

14 (d) A credit union service organization, or any tier subsidiary of  
15 a credit union service organization, in which a credit union has an  
16 interest;

17 (e) An organization that is not a credit union, out-of-state credit  
18 union, federal credit union, or foreign credit union, and that has a  
19 majority interest in a credit union service organization in which a  
20 credit union has an interest;

21 (f) A sole proprietorship or organization primarily in the business  
22 of managing one or more credit unions; (~~and~~)

23 (g) A person providing electronic data processing services to a  
24 credit union; and

25 (h) A corporation or other business entity that provides  
26 alternative share insurance in accordance with RCW 31.12.408.

27 The director shall have full access to the books (~~and~~) records,  
28 personnel, and files, including but not limited to computer files, of  
29 persons described in this subsection.

30 (4) In connection with examinations and investigations, the  
31 director may:

32 (a) Administer oaths and examine under oath any person concerning  
33 the affairs of any credit union or of any person described in  
34 subsection (3) of this section; and

35 (b) Issue subpoenas to and require the attendance and testimony of  
36 any person at any place within this state, and require witnesses to  
37 produce any books and records and files, including but not limited to  
38 computer files, that are material to an examination or investigation.

1 (5) The director may accept in lieu of an examination under this  
2 section:

3 (a) The report of an examiner authorized to examine a credit union  
4 or an out-of-state, federal, or foreign credit union, or other  
5 financial institution; or

6 (b) The report of an accountant, satisfactory to the director, who  
7 has made and submitted a report of the condition of the affairs of a  
8 credit union or an out-of-state, federal, or foreign credit union, or  
9 other financial institution. The director may accept all or part of  
10 such a report in lieu of all or part of an examination. The accepted  
11 report or accepted part of the report has the same force and effect as  
12 an examination under this section.

13 **Sec. 6.** RCW 31.12.565 and 2005 c 274 s 254 are each amended to  
14 read as follows:

15 (1) The following are confidential and privileged and not subject  
16 to public disclosure under chapter 42.56 RCW:

17 (a) Examination reports and information obtained by the director in  
18 conducting examinations and investigations under this chapter and  
19 chapter 31.13 RCW;

20 (b) Examination reports and related information from other  
21 financial institution regulators obtained by the director;

22 (c) Reports or parts of reports accepted in lieu of an examination  
23 under RCW 31.12.545; and

24 (d) Business plans and other proprietary information obtained by  
25 the director in connection with a credit union's application or notice  
26 to the director.

27 (2) Notwithstanding subsection (1) of this section, the director  
28 may furnish examination reports workpapers, final orders, or other  
29 information obtained in the conduct of an examination or investigation  
30 prepared by the director to:

31 (a) Federal agencies empowered to examine credit unions or other  
32 financial institutions;

33 (b) Officials empowered to investigate criminal charges. The  
34 director may furnish only that part of the report which is necessary  
35 and pertinent to the investigation, and only after notifying the  
36 affected credit union and members of the credit union who are named in  
37 that part of the examination report, or other person examined, that the

1 report is being furnished to the officials, unless the officials  
2 requesting the report obtain a waiver of the notice requirement for  
3 good cause from a court of competent jurisdiction;

4 (c) The examined credit union or other person examined, solely for  
5 its confidential use;

6 (d) The attorney general in his or her role as legal advisor to the  
7 director;

8 (e) Prospective merger partners or conservators, receivers, or  
9 liquidating agents of a distressed credit union;

10 (f) Credit union regulators in other states or foreign  
11 jurisdictions regarding an out-of-state or foreign credit union  
12 conducting business in this state under this chapter, or regarding a  
13 credit union conducting business in the other state or jurisdiction;

14 (g) A person officially connected with the credit union or other  
15 person examined, as officer, director, supervisory committee member,  
16 attorney, auditor, accountant, independent attorney, independent  
17 auditor, or independent accountant;

18 (h) Organizations that have bonded the credit union to the extent  
19 that information is relevant to the renewal of the bond coverage or to  
20 a claim under the bond coverage;

21 (i) Organizations insuring or guaranteeing the shares of, or  
22 deposits in, the credit union; or

23 (j) Other persons as the director may determine necessary to  
24 protect the public interest and confidence.

25 (3) Examination reports, work papers, temporary and final orders,  
26 consent orders, and other information obtained in the conduct of an  
27 examination or investigation furnished under subsection (2) of this  
28 section remain the property of the director and no person to whom  
29 reports are furnished or any officer, director, or employee thereof may  
30 disclose or make public the reports or information contained in the  
31 reports except in published statistical information that does not  
32 disclose the affairs of a person, except that nothing prevents the use  
33 in a criminal prosecution of reports furnished under subsection (2) (b)  
34 of this section.

35 (4) In a civil action in which the reports or information are  
36 sought to be discovered or used as evidence, a party may, upon notice  
37 to the director, petition the court for an in-camera review of the  
38 reports or information. The court may permit discovery and

1 introduction of only those portions of the report or information which  
2 are relevant and otherwise unobtainable by the requesting party. This  
3 subsection does not apply to an action brought or defended by the  
4 director.

5 (5) This section does not apply to investigation reports prepared  
6 by the director concerning an application for a new credit union or a  
7 notice of intent to establish a branch of a credit union, except that  
8 the director may adopt rules making portions of the reports  
9 confidential, if in the director's opinion the public disclosure of  
10 that portion of the report would impair the ability to obtain  
11 information the director considers necessary to fully evaluate the  
12 application.

13 (6) Any person who knowingly violates a provision of this section  
14 is guilty of a gross misdemeanor.

15 **Sec. 7.** RCW 31.12.569 and 2001 c 83 s 30 are each amended to read  
16 as follows:

17 Credit unions will comply with the provisions of United States  
18 generally accepted accounting principles as required by federal law or  
19 rule of the director. In adopting rules to implement this section, the  
20 director shall consider, among other relevant factors, whether to  
21 transition small credit unions to generally accepted accounting  
22 principles over a period of time.

23 **Sec. 8.** RCW 31.12.575 and 2001 c 83 s 32 are each amended to read  
24 as follows:

25 The director may issue and serve a credit union director,  
26 supervisory committee member, officer, or employee with written notice  
27 of intent to remove the person from office or employment or to prohibit  
28 the person from participating in the conduct of the affairs of the  
29 credit union or any credit union doing business in Washington state in  
30 accordance with RCW 31.12.625 whenever, in the opinion of the director:

31 (1) (a) The person has committed a material violation of law or an  
32 unsafe or unsound practice; ~~((and))~~ or

33 (b) The person has committed a violation or practice involving  
34 personal dishonesty, recklessness, or incompetence; and

35 (2) (a) The credit union has suffered or is likely to suffer  
36 substantial financial loss or other damage; or

1 (b) The interests of the credit union's share account holders and  
2 depositors could be seriously prejudiced by reason of the violation or  
3 practice(~~(<sup>1</sup> and~~  
4 ~~(3) - The violation or practice involves personal dishonesty,~~  
5 ~~recklessness, or incompetence)).~~

6 **Sec. 9.** RCW 31.12.585 and 2001 c 83 s 33 are each amended to read  
7 as follows:

8 The director may issue and serve (~~(a credit union)~~) any entity  
9 regulated by this chapter with a written notice of charges and intent  
10 to issue a cease and desist order if, in the opinion of the director,  
11 the (~~(credit union)~~) regulated entity has committed or is about to  
12 commit:

- 13 (1) A material violation of law; or
- 14 (2) An unsafe or unsound practice.

15 Upon taking effect, the order may require the (~~(credit union)~~)  
16 regulated entity and its directors, supervisory committee members,  
17 officers, employees, and agents to cease and desist from the violation  
18 or practice and may require them to take affirmative action to correct  
19 the conditions resulting from the violation or practice.

20 **Sec. 10.** RCW 31.12.595 and 2001 c 83 s 34 are each amended to read  
21 as follows:

22 (1) If the director determines that the violation or practice  
23 specified in RCW 31.12.585 is likely to cause an unsafe or unsound  
24 condition at the credit union, the director may issue and serve a  
25 temporary cease and desist order. The order may require the credit  
26 union and its directors, supervisory committee members, officers,  
27 employees, and agents to cease and desist from the violation or  
28 practice and may require them to take affirmative action to correct the  
29 conditions resulting from the violation or practice.

30 (2) With the temporary order, the director shall serve a notice of  
31 charges and intent to issue a cease and desist order under RCW  
32 31.12.585 in the matter.

33 (3) The temporary order becomes effective upon service on the  
34 credit union and remains effective until completion of the  
35 administrative proceedings under the notice issued under subsection (2)  
36 of this section.

1 (4) Within ten days after a credit union has been served with a  
2 temporary order, the credit union may apply to the superior court in  
3 the county of its principal place of business for an injunction setting  
4 aside, limiting, or suspending the order pending the completion of the  
5 administrative proceedings under the notice issued under subsection (2)  
6 of this section.

7 (5) In the case of a violation or threatened violation of a  
8 temporary order, the director may apply to the superior court of the  
9 county of the principal place of business of the credit union for an  
10 injunction to enforce the order, and the court shall issue an  
11 injunction if it determines that there has been a violation or  
12 threatened violation.

13 (6) For the purposes of this section, the principal place of  
14 business of a foreign or out-of-state credit union is Thurston county.

15 **Sec. 11.** RCW 31.12.625 and 2001 c 83 s 35 are each amended to read  
16 as follows:

17 An administrative hearing on the notice provided for in RCW  
18 31.12.575 and 31.12.585 must be conducted in accordance with chapter  
19 34.05 RCW(~~(, provided that)~~), and may be conducted by the director or  
20 the director's designee. To the extent the requirements of this  
21 chapter are inconsistent with chapter 34.05 RCW, this chapter will  
22 govern. The hearing may be held at such place as is designated by the  
23 director. The hearing shall be private unless the director determines  
24 that a public hearing is necessary to protect the public interest after  
25 fully considering the views of the party afforded the hearing.

26 **Sec. 12.** RCW 31.12.651 and 1997 c 397 s 64 are each amended to  
27 read as follows:

28 (1) As authorized by RCW 31.12.637, the director may, upon due  
29 notice and hearing conducted by the director or the director's  
30 designee, appoint a conservator for a credit union. The director may  
31 appoint himself or herself or another qualified party as conservator of  
32 the credit union. The conservator shall immediately take charge of the  
33 credit union and all of its property, books, records, and effects.

34 (2) The conservator shall conduct the business of the credit union  
35 and take such steps toward the removal of the causes and conditions

1 that have necessitated the appointment of a conservator, as the  
2 director may direct. The conservator is authorized to, without  
3 limitation:

4 (a) Take all necessary measures to preserve, protect, and recover  
5 any assets or property of the credit union, including any claim or  
6 cause of action belonging to or which may be asserted by the credit  
7 union, and administer the same in his or her own name as conservator;  
8 and

9 (b) File, prosecute, and defend any suit that has been filed or may  
10 be filed by or against the credit union that is deemed by the  
11 conservator to be necessary to protect all of the interested parties or  
12 a property affected thereby.

13 The conservator shall make such reports to the director from time  
14 to time as may be required by the director.

15 (3) All costs incident to conservatorship will be a charge against  
16 the assets of the credit union to be allowed and paid as the director  
17 may determine.

18 (4) If at any time the director determines that the credit union is  
19 not in condition to continue business under the conservator in the  
20 interest of its share account holders, depositors, or creditors, and  
21 grounds exist under RCW 31.12.637, the director may proceed with  
22 appointment of a liquidating agent or receiver in accordance with this  
23 chapter.

24 (5) The director, the department and its employees, and third  
25 parties acting as conservators are not subject to liability for actions  
26 under this section, and no departmental funds may be required to be  
27 expended on behalf of the credit union, or its creditors, employees,  
28 members, or any other party or entity.

29 **Sec. 13.** RCW 31.12.671 and 1997 c 397 s 70 are each amended to  
30 read as follows:

31 (1) As authorized by RCW 31.12.637, the director may without prior  
32 notice appoint a receiver to take possession of a credit union. The  
33 director may appoint the national credit union administration or other  
34 qualified party as receiver. Upon appointment, the receiver is  
35 authorized to act without bond. Upon acceptance of the appointment,  
36 the receiver shall have and possess all the powers and privileges  
37 provided by the laws of this state with respect to the receivership of

1 a credit union, and be subject to all the duties of and restrictions  
2 applicable to such a receiver, except insofar as such powers,  
3 privileges, duties, or restrictions are in conflict with any applicable  
4 provision of the federal credit union act.

5 Upon taking possession of the credit union, the receiver shall give  
6 written notice to the directors of the credit union and to all persons  
7 having possession of any assets of the credit union. No person with  
8 knowledge of the taking of possession by the receiver shall have a lien  
9 or charge for any payment advanced, clearance made, or liability  
10 incurred against any of the assets of the credit union, after the  
11 receiver takes possession, unless approved by the receiver.

12 (2) The director, the department and its employees, and any third-  
13 party receiver acting on behalf of the department are not subject to  
14 liability for actions taken pursuant to appointment of a receiver under  
15 this section. Funds of the department may not be required to be  
16 expended on behalf of the credit union or its members, directors,  
17 officers, employees, or any other person.

18 **Sec. 14.** RCW 31.12.674 and 1997 c 397 s 71 are each amended to  
19 read as follows:

20 Within ten days after the receiver takes possession of a credit  
21 union's assets, the credit union may serve notice upon the receiver to  
22 appear before the superior court of the county in which the principal  
23 place of business of the credit union is located and at a time to be  
24 fixed by the court, which may not be less than five or more than  
25 fifteen days from the date of the service of the notice, to show cause  
26 why the credit union should not be restored to the possession of its  
27 assets. For the purposes of this section, the principal place of  
28 business of a foreign or out-of-state credit union is Thurston county.

29 The court shall summarily hear and dismiss the complaint if it  
30 finds that the receiver was appointed for cause. However, if the court  
31 finds that no cause existed for appointment of the receiver, the court  
32 shall require the receiver to restore the credit union to possession of  
33 its assets and enjoin the director from further appointment of a  
34 receiver for the credit union without cause.

35 **Sec. 15.** RCW 31.12.850 and 2003 c 53 s 193 are each amended to  
36 read as follows:

1 (1) (a) It is unlawful for a director, supervisory committee member,  
2 officer, employee, or agent of a credit union to knowingly violate or  
3 consent to a violation of this chapter.

4 (b) It is unlawful for any person to knowingly make or disseminate  
5 a false report or other misrepresentation about the financial condition  
6 of any credit union.

7 (c) Unless otherwise provided by law, a violation of this  
8 subsection is a misdemeanor under chapter 9A.20 RCW.

9 (2) (a) It is unlawful for a person to perform any of the following  
10 acts:

11 (i) To knowingly subscribe to, make, or cause to be made a false  
12 statement or entry in the books of a credit union;

13 (ii) To knowingly make a false statement or entry in a report  
14 required to be made to the director; or

15 (iii) To knowingly exhibit a false or fictitious paper, instrument,  
16 or security to a person authorized to examine a credit union.

17 (b) A violation of this subsection is a class C felony under  
18 chapter 9A.20 RCW.

19 NEW SECTION. Sec. 16. A new section is added to chapter 31.12 RCW  
20 to read as follows:

21 (1) The department is authorized to assess civil fines to the  
22 credit union for violation of any of the following:

23 (a) Any material provision of this chapter or related rules;

24 (b) Any final or temporary order, including a cease and desist,  
25 suspension, removal, or prohibition order;

26 (c) Any supervisory agreement;

27 (d) Any condition imposed in writing in connection with the grant  
28 of any application or other request; or

29 (e) Any other written agreement entered into with the director.

30 (2) At the option of the director, a violation of this section  
31 subjects the violator to a fine of up to ten thousand dollars per  
32 violation. A continuing violation shall be considered a single  
33 violation for this purpose. The fine is payable upon issuance of any  
34 order or directive of the director, and may be recovered by the  
35 attorney general in a civil action in the name of the department.

36 (3) The department is authorized to adopt rules for the  
37 implementation of this section.

1        NEW SECTION.    **Sec. 17.** A new section is added to chapter 31.12 RCW  
2 to read as follows:

3        (1) The director may issue and serve an order suspending a person  
4 from further participation in any manner in the conduct of the affairs  
5 of a credit union if the director determines that such an action is  
6 necessary for the protection of the credit union or the interests of  
7 the credit union members. Any suspension order issued by the director  
8 is effective upon service and, unless the superior court of the county  
9 in which the primary place of business of the credit union is located  
10 issues a stay of the order, remains in effect and enforceable until  
11 completion of the administrative proceedings under RCW 31.12.575.

12        (2) With the suspension order, the director shall serve a notice of  
13 intent to remove or prohibit under RCW 31.12.575.

14        (3) Within ten days after the person has been served with the  
15 suspension order, the person may apply to the superior court of the  
16 county in which the primary place of business of the credit union is  
17 located for an injunction setting aside, limiting, or suspending the  
18 order pending the completion of the administrative proceedings under  
19 the notice issued under subsection (2) of this section.

20        (4) In the case of a violation or threatened violation of a  
21 suspension order, the director may apply to the superior court of the  
22 county in which the primary place of business of the credit union is  
23 located for an injunction to enforce the order, and the court shall  
24 issue an injunction if it determines that there has been a violation or  
25 threatened violation.

26        (5) For the purposes of this section, the principal place of  
27 business of a foreign or out-of-state credit union is Thurston county.

28        NEW SECTION.    **Sec. 18.** A new section is added to chapter 31.12 RCW  
29 to read as follows:

30        After the taking of possession of the property and business of a  
31 credit union, through conservatorship or receivership, the conservator  
32 or receiver may terminate or adopt any executory contract to which the  
33 credit union may be a party, including leases of real or personal  
34 property. The termination or adoption shall be made within six months  
35 after obtaining knowledge of the existence of the contract or lease.  
36 Any provision in the contract or lease which provides for damages or

1 cancellation fees upon termination shall not be binding on the  
2 conservator, receiver, or credit union. The director, conservator, or  
3 receiver, and credit union are not liable for damages.

4 NEW SECTION. Sec. 19. A new section is added to chapter 31.12 RCW  
5 to read as follows:

6 If at any time because of the removal of one or more credit union  
7 directors under this chapter, the board of directors of a credit union  
8 has less than a quorum of directors, all powers and functions vested in  
9 or exercisable by the board vest in and are exercisable by the director  
10 or directors remaining until such a time as there is a quorum on the  
11 board of directors. If all of the directors of a credit union are  
12 removed under this chapter, the director of the department of financial  
13 institutions shall appoint persons to serve temporarily as directors of  
14 the credit union until such a time as their respective successors take  
15 office.

16 NEW SECTION. Sec. 20. If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20 NEW SECTION. Sec. 21. This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 immediately.

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