

HOUSE BILL NO. 319
INTRODUCED BY B. LAWSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO CREDIT UNIONS; CLARIFYING THE USE OF "CREDIT UNION" IN THE NAME OF CREDIT UNIONS; AUTHORIZING OUT-OF-STATE CREDIT UNIONS TO DO BUSINESS IN THIS STATE UNDER CERTAIN CONDITIONS; AUTHORIZING MONTANA CREDIT UNIONS TO CONDUCT BUSINESS IN OTHER STATES UNDER CERTAIN CONDITIONS; GENERALLY REPLACING REFERENCES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION WITH REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR EXAMINATIONS OF CREDIT UNIONS ON A SCHEDULE DETERMINED BY THE DEPARTMENT RATHER THAN ON AN ANNUAL BASIS; ESTABLISHING CRITERIA FOR CEASE AND DESIST ORDERS AND INVOLUNTARY DISSOLUTION; REVISING SUSPENSION CRITERIA; ESTABLISHING CRITERIA FOR APPOINTING A CONSERVATOR FOR A CREDIT UNION; ESTABLISHING CRITERIA FOR THE INVOLUNTARY MERGER OF A CREDIT UNION; PROVIDING FOR THE CONFIDENTIALITY OF CERTAIN CREDIT UNION INFORMATION MAINTAINED BY THE DEPARTMENT OF ADMINISTRATION; REVISING CERTAIN ORGANIZATIONAL AND ADMINISTRATIVE PROCEDURES OF CREDIT UNIONS; REVISING VOLUNTARY LIQUIDATION AND MERGER PROCEDURES; REVISING BOARD OF DIRECTORS AND COMMITTEE PROCEDURES; REVISING ACCOUNT, SHARE, AND LOAN PROVISIONS; REVISING RESERVE REQUIREMENTS; AMENDING SECTIONS 32-3-103, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-310, 32-3-321, 32-3-322, 32-3-323, 32-3-401, 32-3-403, 32-3-404, 32-3-408, 32-3-411, 32-3-412, 32-3-414, 32-3-417, 32-3-505, 32-3-506, 32-3-508, 32-3-601, 32-3-602, 32-3-604, 32-3-608, 32-3-611, 32-3-702, 32-3-703, AND 32-3-705, MCA; AND REPEALING SECTION 32-3-704, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-3-103, MCA, is amended to read:

"32-3-103. Use of name exclusive. (1) The name of any credit union organized under this chapter must include the phrase "credit union". A credit union may not adopt a name either identical to the name of any other credit union doing business in this state or so similar as to be misleading or to cause confusion.

(2) ~~With the exception of~~ A person, other than a credit union organized under the provisions of this

chapter or of any other credit union act or an ~~association~~ organization or corporation whose membership or ownership is primarily limited to ~~of credit unions or credit union organizations, a recognized chapter thereof, any person, corporation, partnership, or association using~~ may not use a name or title containing the words "credit union" or any derivation ~~thereof~~ of the words "credit union", or representing themselves in their advertising or otherwise as conducting business as and the person may not represent that the person is a credit union and may not conduct business as a credit union.

(3) A person who violates a provision of this section shall be fined not more than \$500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name further violation of the provisions of this section."

NEW SECTION. Section 2. Out-of-state credit unions. (1) A credit union chartered under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the department of administration, provided that credit unions incorporated under this chapter are allowed to do business in the other state or territory under conditions similar to these provisions.

(2) Before granting approval to do business in this state, the department must find that an out-of-state credit union:

- (a) is a credit union organized under laws similar to this chapter;
- (b) is financially solvent;
- (c) has account insurance comparable to that required for credit unions incorporated under this chapter;
- (d) is examined and supervised by a regulatory agency of the state in which it is organized; and
- (e) needs to conduct business in this state to adequately serve its members in this state.

(3) An out-of-state credit union may not conduct business in this state unless it:

(a) complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;

(b) agrees to furnish the department with a copy of the examination report conducted by its regulatory agency or to submit to an examination by the department; and

(c) designates and maintains an agent for the service of process in this state.

(4) The department may revoke the approval of an out-of-state credit union conducting business in this state if the department finds that:

- (a) the credit union no longer meets the requirements of subsection (2);
- (b) the credit union has violated the laws of this state or lawful rules or orders issued by the department;

- (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;
- (d) continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic, or other interests of residents of this state; or
- (e) the credit union is prohibited from operating in its own home state.

NEW SECTION. Section 3. Conducting business outside this state. (1) A credit union chartered under this chapter may conduct business outside of this state in other states or territories where it is permitted to conduct business as a credit union, under conditions substantially similar to the provisions of this chapter.

(2) If another state or territory's credit union laws or regulations allow credit unions operating in that state or territory to exercise additional powers not allowed in this state, the credit union conducting business outside this state may request permission from the department of administration to exercise those additional powers while operating in that state.

(3) Upon request for approval to exercise a power not allowed in this state, submitted by certified mail, return receipt requested, the department shall respond with a determination in not more than 60 days. For good cause shown within the 60-day period, the department may extend the response period for an additional 30 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit union may exercise the power.

Section 4. Section 32-3-201, MCA, is amended to read:

"32-3-201. ~~Director of department~~ Department of administration. (1) The ~~director of the~~ department of administration shall administer the laws of this state relating to credit unions. The ~~director~~ department may appoint or employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of administering or enforcing this chapter.

(2) The ~~director~~ department may adopt rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The ~~director~~ department shall adopt rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

(4) The department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a credit union is organized and the state or states in which the credit

union's branches may be located."

Section 5. Section 32-3-202, MCA, is amended to read:

"32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the ~~director~~ department of administration annually on or before February 1 on forms supplied by ~~him~~ the department for that purpose. Additional reports may be required.

(2) A fine of \$5 for each day a report is in arrears ~~shall~~ must be levied against the offending credit union unless it is excused for cause by the ~~director~~ department."

Section 6. Section 32-3-203, MCA, is amended to read:

"32-3-203. Examinations. (1) The department of administration shall ~~annually~~ examine or cause to be examined each credit union on a schedule determined by the department. Each credit union and all of its officers and agents ~~must be required to~~ shall give to representatives of the ~~director of the~~ department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an ~~annual~~ examination of a credit union, the ~~director~~ department may accept an audit report of the condition of the credit union made by an auditor approved by the ~~director~~ department. The cost of the audit must be borne by the credit union."

Section 7. Section 32-3-204, MCA, is amended to read:

"32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules that ~~the director of the~~ department of administration prescribes. In prescribing rules, the ~~director~~ department shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the ~~director~~ department.

(3) A photostatic or photographic copy or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, of any credit union records ~~must be~~ is admissible as evidence of transactions with the credit union."

Section 8. Section 32-3-205, MCA, is amended to read:

"32-3-205. Suspension Cease and desist orders -- suspension -- involuntary liquidation. (1) The department of administration may issue cease and desist orders after having determined, from competent and substantial evidence, that a credit union:

(a) is engaged or is about to engage in an unsafe or unsound practice; or

(b) is violating or has violated a material provision of any law, rule, or condition imposed in writing by the department or any written agreement made with the department.

(2) (a) The department may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, or committee member who has committed any violation of a law, rule, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice that constitutes a breach of that person's fiduciary duty as a director, officer, or committee member when the department has determined that:

(i) the action of the director, officer, or committee member has resulted or will likely result in substantial financial loss or other damage;

(ii) the interests of the credit union's members have been or may be prejudiced by the action of the director, officer, or committee member;

(iii) the director, officer, or committee member has received financial gain or other benefit as a result of the action; or

(iv) the action of the director, officer, or committee member involves personal dishonesty or demonstrates unfitness to serve as a director, officer, or committee member.

(b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a) may request a hearing under the Montana Administrative Procedure Act.

~~(3)~~ (a) If it appears that any a credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the ~~director of the department of administration shall~~ may issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors must be given notice by certified mail of the suspension. The notice must include

a list of the reasons for the suspension and a list of the specific violations of this chapter.

~~(2)(b)~~ Upon receipt of a suspension notice, the credit union shall cease all operations, except those authorized by the ~~director department~~, or the department may appoint a conservator to operate the credit union during the period of suspension. The ~~credit union board of directors~~ shall ~~then~~ file with the ~~director department~~ a reply to the suspension notice and ~~may request a hearing to~~ present a plan of proposed corrective actions ~~proposed~~ if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

~~(3)(c)~~ Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected or upon acceptance of a plan of proposed corrective actions, the ~~director department~~ may revoke the suspension notice and permit the credit union to resume normal operations.

~~(4)(d)~~ If the ~~director department~~, after issuing a notice of suspension and ~~providing an opportunity for a hearing~~, rejects the credit union's plan to continue operations, ~~the director may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of the action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section~~ the board may request an administrative hearing.

~~(5)(4)~~ If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing or if after a hearing, the department continues to reject the credit union's plan to continue operations, the ~~director department~~ may ~~then~~:

(a) permit the credit union to operate under a conservator until conditions requiring suspension are remedied;

(b) involuntarily merge the credit union in accordance with the provisions of [section 10]; or

(c) revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

(5) The department may not involuntarily merge or involuntarily liquidate a credit union prior to the suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the department's suspension, involuntary merger, or involuntary liquidation order.

(6) In the event of liquidation of a credit union, the assets of the credit union or the proceeds from the disposition of the credit union's assets must be applied and distributed in the following sequence:

(a) to secured creditors up to the value of their secured collateral;

(b) for the costs and expenses of liquidation;

(c) for wages due employees of the credit union;

(d) for taxes owed to any government unit;

(e) for any debts owed the United States;

(f) to general creditors and to secured creditors to the extent that their claims exceed the value of their collateral; and

(g) to shareholders of the credit union to the extent of their uninsured shares."

NEW SECTION. Section 9. Conservatorship. (1) In conjunction with a suspension order or if the department of administration's examination has been obstructed or impeded, the department may appoint itself or appoint any other competent person as conservator to immediately take possession and control of the business and assets of a credit union. The conservator, representing the best interest of the credit union members, must be vested with the full power of management of the credit union.

(2) Not later than 15 days after the date on which the conservator takes possession and control of the business and assets of a credit union pursuant to subsection (1), the credit union may apply to the appropriate court for an order requiring the department to show cause why the department or the designated conservator should not be enjoined from continuing possession and control.

(3) Except as provided in subsection (2), the conservator may maintain possession and control of the business and assets of the credit union and may operate the credit union until:

(a) the department permits the credit union's officials to continue business subject to any terms and conditions the department imposes; or

(b) the credit union is involuntarily merged or involuntarily liquidated in accordance with the provisions of 32-3-205.

(4) The department may appoint any agents considered necessary to assist the conservator in carrying out the duties of the conservator under this section.

(5) All expenses incurred by the conservator in exercising the authority of that office under this section with respect to a credit union must be paid out of the assets of the credit union, except that the department may waive all or a part of the expenses.

NEW SECTION. Section 10. Involuntary merger. The department of administration may initiate the involuntary merger of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent or in danger of insolvency if the department is satisfied that:

(1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent or

in danger of insolvency;

- (2) other alternatives are not reasonably available; and
- (3) the public interest would best be served by approval of the merger, purchase, or assumption.

NEW SECTION. Section 11. Confidentiality -- penalties. (1) (a) Any report of examination issued under 32-3-203, any report made by a credit union under 32-3-202, and any other credit union documentation maintained by the department of administration, other than those reports that are required to be published, must be considered confidential information. The information may not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal credit union regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information may be used by the department only in the furtherance of its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a credit union is guilty of a felony and must be removed from office. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

Section 12. Section 32-3-206, MCA, is amended to read:

"32-3-206. Authorized activities of credit unions. Upon written application to the ~~director~~ department of administration, a credit union may engage in any activity in which ~~such a~~ credit union could engage ~~if it were~~ it operating as a federal chartered credit union at the time ~~such the~~ authority is granted. ~~Such powers~~ The activities shall include; but are not by way of limitation limited to; the power to do any act and to own, possess, and carry as assets property of such character including stocks, bonds, or other debentures ~~which that,~~ at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, ~~notwithstanding and are not subject to any restrictions elsewhere contained elsewhere in the statutes of the state of Montana law, except that the~~ However, the ~~director~~ department may not charter a credit union not

having a common bond of membership as defined in 32-3-304. The ~~director~~ department shall approve an activity if ~~he~~ it finds that ~~it~~ the activity fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the ~~director~~ department disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied."

Section 13. Section 32-3-301, MCA, is amended to read:

"32-3-301. Organization procedure. (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words "credit union" and which ~~may not be the same as that of any other existing credit union in this state~~ must conform with the provisions of 32-3-103, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or more than \$25;

(d) that the credit union is organized under this chapter for the purposes set forth in the articles;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than \$5; and

(f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the bylaws in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee if the bylaws provide for a supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be executed by the parties. This agreement must be submitted to the ~~director of the~~ department of administration.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the ~~director of the department of administration~~. The director department may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the director department is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The director department shall return to the applicants or their representatives a copy of the bylaws and the articles, which must be preserved in the permanent files of the credit union. The application must be acted upon within 30 days. The articles of incorporation must be filed with the secretary of state who, upon payment of the fees for filing the articles, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

(7) If the department denies a certificate of approval, the subscribers may request a hearing under the Montana Administrative Procedure Act."

Section 14. Section 32-3-302, MCA, is amended to read:

"32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the ~~director of the department of administration shall cause to be prepared~~ prepare a form of articles of incorporation and a form of bylaws, consistent with this chapter, ~~which that~~ which may be used by credit union incorporators for their guidance. The articles of incorporation and bylaws must be available without charge to persons desiring to organize a credit union."

Section 15. Section 32-3-303, MCA, is amended to read:

"32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws must be submitted, by certified mail, return receipt requested, to the ~~director of the department of administration, who~~ which shall approve or disapprove the amendments within 60 days.

(2) Amendments become effective upon:

- (a) approval in writing by the director department, for which a fee may not be charged; and
- (b) in the case of articles of incorporation, filing with the secretary of state.

(3) If the department does not approve or disapprove the amendments within the 60-day period, the amendments must be considered approved, except that the department may extend the approval period for an

additional 30 days for good cause as stated in a written notice given to the credit union within the original 60-day period."

Section 16. Section 32-3-307, MCA, is amended to read:

"32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the ~~director of the~~ department of administration, for whom credit union services are otherwise unavailable."

Section 17. Section 32-3-310, MCA, is amended to read:

"32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union ~~shall~~ must be held at the time, place, and in the manner indicated by the bylaws.

(2) At all ~~such~~ meetings a member ~~shall have but~~ has only one vote, irrespective of ~~his~~ the member's shareholdings. ~~No~~ A member may not vote by proxy, but a member may vote by absentee ballot, mail ballot, or other method if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided ~~such~~ that the person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both."

Section 18. Section 32-3-321, MCA, is amended to read:

"32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section ~~and the applicable Montana corporation laws.~~

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the ~~president~~ presiding officer of the board shall notify the ~~director of the~~ department of administration in writing, setting forth the reasons for the proposed action and a plan for liquidation. Within 10 days after the members act on the question of liquidation, the ~~president~~ presiding officer of the board shall notify the ~~director~~ department in writing as to whether or not the members approved the proposed liquidation.

(4) ~~As soon as the board of directors decides to submit the question of liquidation to the members,~~

Depending on the credit union's circumstances, a liquidation plan may or may not require the suspension of payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting new loans, or other similar financial transactions must be suspended pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions must be permanently discontinued. Necessary expenses of operation must continue to be paid on authorization of the board of directors or liquidating agent or committee during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each member, by first-class mail, at least 10 days prior to the meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as required by this chapter.

~~(6)(7)~~ A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

~~(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:~~

- ~~— (a) expenses incidental to liquidating, including any surety bond that may be required;~~
- ~~— (b) any liability due nonmembers; and~~
- ~~— (c) special purpose thrift accounts as provided in this chapter. Remaining assets must be distributed to the members proportionately to the shares held by each member as of the date dissolution was approved.~~

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

~~(8)(9)~~ As soon as the board of directors or the liquidating agent or committee determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the board or the liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department. The form, together with all pertinent books and records of the liquidating credit union, must be filed with the department and the secretary of state. Upon filing with both entities, the credit union is dissolved.

(10) If the department determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of

this chapter, the department may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to function of the liquidating agent."

Section 19. Section 32-3-322, MCA, is amended to read:

"32-3-322. Merger. (1) Any credit union may, with the approval of the ~~director of the~~ department of administration and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for that purpose.

(2) After agreement by ~~the~~ each board of directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of the following:

- (a) the time and place of the meeting of ~~the~~ each board of directors at which the plan was agreed upon;
- (b) the vote in favor of the adoption of the plan;
- (c) a copy of the resolution or other action by which the plan was agreed upon;
- (d) the time and place of the meeting of the members at which the plan agreed upon was approved; and
- (e) the vote by which the plan was approved by the members.

(3) The certificate and a copy of the plan of merger agreed upon must be forwarded to the ~~director~~ department, certified by the ~~director~~ department, and returned to both credit unions within 30 days. A copy of the certificate of merger and certified plan must be filed with the secretary of state by the surviving credit union.

(4) Upon return of the certificate from the ~~director~~ department, all property rights and members' interest of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact.

(5) This section must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

Section 20. Section 32-3-323, MCA, is amended to read:

"32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the ~~director of the~~ department of administration.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the ~~director of the~~ department of ~~administration~~ and file proof of compliance with the ~~director~~ department."

Section 21. Section 32-3-401, MCA, is amended to read:

"32-3-401. General powers. A credit union may:

- (1) make contracts as provided for in this chapter;
- (2) sue and be sued;
- (3) adopt and use a common seal and alter ~~same~~ the seal;
- (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) receive savings from its members in the form of shares or special-purpose thrift accounts;
- (7) lend its funds to its members as hereinafter provided;
- (8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;
- (9) discount and sell any eligible obligations, subject to rules prescribed by the ~~director~~ department of administration;
- (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the ~~director~~ department;
- (11) invest surplus funds as provided in this chapter;
- (12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;
- (13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;
- (14) hold membership in other credit unions organized under this chapter or other laws and in other

associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse ~~moneys~~ money in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for ~~such~~ the services;

(17) perform ~~such~~ tasks and missions ~~as that~~ are requested by the federal government or this state or any agency or political subdivision ~~thereof~~ of the federal government or this state, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to ~~such~~ regulations ~~as are~~ prescribed by the ~~director~~ department;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations ~~as are~~ prescribed by the ~~director~~ department;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of ~~such~~ the accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision ~~thereof~~ of the federal government or this state."

Section 22. Section 32-3-403, MCA, is amended to read:

"32-3-403. Election or appointment of officials. (1) The credit union must be directed by a board, consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for terms that the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for terms that the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors.

(3) ~~The~~ As provided in the bylaws, the board of directors shall appoint or the members shall elect a credit

committee, consisting of an odd number of at least three members, for terms that the bylaws provide, ~~or, in lieu~~ of a credit committee, the bylaws may provide that the board of directors shall appoint a credit manager."

Section 23. Section 32-3-404, MCA, is amended to read:

"32-3-404. Record of board and committee members. Within ~~45~~ 30 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union must be filed with the department of administration on forms provided by the department."

Section 24. Section 32-3-408, MCA, is amended to read:

"32-3-408. Executive officers. (1) At their ~~organization next~~ meeting ~~and within 15 days~~ following each annual meeting of the members, the directors shall elect from their own number:

(a) an executive officer, who may be designated as ~~chairman~~ the presiding officer of the board ~~or president;~~

(b) ~~a vice-chairman~~ one or more vice presiding officers of the board ~~or one or more vice-presidents;~~

(c) a treasurer; and

(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected ~~shall~~ must be the executive officers of the corporation.

(4) The terms of the officers ~~shall~~ must be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers ~~shall~~ must be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title ~~shall~~ must be either president or general manager or president and general manager; ~~or, in lieu thereof,~~ the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union."

Section 25. Section 32-3-411, MCA, is amended to read:

"32-3-411. Meetings of board of directors and committees. (1) ~~Either the~~ The board of directors and ~~or the executive committee shall meet each month. as often~~ The board of directors or the executive committee may meet at other times as necessary, but one body must meet at least monthly and the other at least quarterly.

(2) Unless specifically prohibited by the bylaws, directors and members of the supervisory committee

or credit committee may participate in and act at any meeting of the board or the supervisory or credit committee through the use of communications equipment that enables all persons participating in the meeting to communicate with each other. Participation in the meeting in this manner constitutes attendance.

(3) Unless specifically prohibited by the bylaws, any action required by this chapter to be taken at a meeting of the board of directors or a committee or any other action that may be taken at a meeting of the board of directors or a committee may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the directors of the board or the committee members entitled to vote with respect to the subject matter of the action taken. The written consents must be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more board directors or committee members. All the approvals evidencing the consent must be delivered to the secretary to be filed in the corporate records of the credit union. The action taken is effective when all the directors or committee members have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors or committee members has the same effect as a unanimous vote and may be stated as a unanimous vote in any document filed with the department under this chapter."

Section 26. Section 32-3-412, MCA, is amended to read:

"32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under ~~such conditions as prescribed by the board prescribes~~. A record of a membership officer's approval or denial of membership ~~shall~~ must be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the ~~director~~ department of administration, to protect the credit union against losses caused by occurrences covered ~~therein by the bond~~ such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on ~~such~~ classes of loans and under ~~such conditions as prescribed by the board prescribes~~;

(4) fix from time to time the maximum amount ~~which that~~ may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares ~~which that~~ may be owned by a member, ~~such the~~ limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of ~~such~~ persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform ~~such~~ other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members."

Section 27. Section 32-3-414, MCA, is amended to read:

"32-3-414. Meeting of credit committee -- loan approval. The credit committee shall meet as often as the business of the credit union requires ~~and not less frequently than once a month~~ to consider applications for loans. ~~No~~ A loan shall ~~may not~~ be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. However, credit union loan policies may provide that the credit committee may approve loans by category of size or type."

Section 28. Section 32-3-417, MCA, is amended to read:

"32-3-417. ~~Duties of supervisory committee or board~~ Audits. (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. ~~It~~ The board or committee shall make or cause to be made ~~such any~~ supplementary audits or examinations as it ~~deems~~ considers necessary or as are required by the ~~director~~ department of administration or by the board of directors and submit reports of these

supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years."

Section 29. Section 32-3-505, MCA, is amended to read:

"32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with ~~him~~ the member in joint tenancy with the right of survivorship, as a tenant in common, or under any other form of multiple party account ownership permitted by law and allowed by the credit union. ~~but no A~~ joint tenant, unless a member in ~~his~~ the joint tenant's own right, ~~shall may not~~ be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. If a credit union allows more than one joint owner to seek credit union membership through a joint account, the joint account must contain a membership share for each joint owner seeking membership.

(2) Payment of part or all of ~~such accounts~~ a joint account to any of the joint ~~tenants~~ owners ~~shall~~, to the extent of ~~such~~ the payment, ~~discharge~~ discharges the liability to all joint owners."

Section 30. Section 32-3-506, MCA, is amended to read:

"32-3-506. ~~Trust accounts~~ Shares in trust. (1) Shares may be issued in the name of a ~~member in revocable~~ trust for a beneficiary, including a minor; ~~but no~~ if the trustor is a member, or shares may be issued in the name of an irrevocable trust if either the trustor or the beneficiary is a member. A beneficiary, unless a member in ~~his~~ the beneficiary's own right, ~~shall may not~~ be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of ~~such~~ the shares described in subsection (1) to ~~such member~~ shall a trustee, to the extent of ~~such~~ the payment, ~~discharge~~ discharges the liability of the credit union to the ~~member~~ trustee and the beneficiary; and the credit union shall be under no obligation is not obligated to see to the application of such the payment.

~~(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary."~~

Section 31. Section 32-3-508, MCA, is amended to read:

"32-3-508. Dormant accounts. ~~(1) If a credit union is unable to contact a member, beneficiary, or other~~

~~person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.~~

~~———(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance~~ When administering member accounts that are dormant, unclaimed, or abandoned, a credit union shall comply with the Uniform Disposition of Unclaimed Property Act provided for in Title 70, chapter 9, part 8.

~~(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1)."~~

Section 32. Section 32-3-601, MCA, is amended to read:

"32-3-601. Loans -- purposes, terms, and conditions. A credit union may loan to members for ~~such purpose~~ the purposes and ~~upon such security and terms as the credit committee, credit manager, or loan officer approves~~ under the conditions as prescribed by the board of directors. The board of directors shall establish written policies with respect to granting loans and extending lines of credit. The policies must include terms, conditions, and acceptable forms of security."

Section 33. Section 32-3-602, MCA, is amended to read:

"32-3-602. Loan application. Every application for a loan must be made ~~in upon~~ a form that the credit committee, credit manager, or loan officer prescribes prescribed by the credit union. The application must state the security, if any, offered. Each loan must be evidenced by a written document or electronic data capable of being converted into written form."

Section 34. Section 32-3-604, MCA, is amended to read:

"32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor; or ~~assignment~~ pledge of shares ~~of wages~~, in a manner consistent with the laws of this state, ~~shall~~ must be ~~deemed~~ considered security within the meaning of this chapter. The adequacy of any security ~~shall be determined by the credit committee, credit manager, or loan officer;~~ is subject to this chapter and the bylaws the lending policies established by the board of directors."

Section 35. Section 32-3-608, MCA, is amended to read:

"32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees if:

(a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers, except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration; and

(b) the loan or aggregate of loans to any one director or committee member that exceeds \$20,000 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, the credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, ~~except when~~ If the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$20,000, a report to the board of directors is required."

Section 36. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and ~~the director of the~~ department of administration.

(2) A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the ~~director of the~~ department of administration.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) ~~The director of the~~ Subject to the provisions of [section 11], the department of administration shall make available reports of condition and examination reports to the ~~administrator of the~~ national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of ~~such administrators or officials~~ the national credit union administration or insurance plan official. ~~The director~~ department may appoint the ~~administrator of the~~ national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union."

Section 37. Section 32-3-702, MCA, is amended to read:

"32-3-702. ~~Makeup Maintenance of regular reserve account.~~ ~~(1) The department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. The department may rely on standards adopted by the national credit union administration in making any determination to require a credit union to establish a regular reserve account. Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:~~

~~—— (a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then~~

~~—— (b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then~~

~~—— (c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.~~

~~—— (2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.~~

~~—— (3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve."~~

Section 38. Section 32-3-703, MCA, is amended to read:

"32-3-703. Use of regular reserve account. The regular reserve account belongs to the credit union and must be used to meet losses including, with prior approval of the ~~director of the~~ department of administration, losses from the sale of investments or securities. The regular reserve account may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the ~~director of the department of administration.~~"

Section 39. Section 32-3-705, MCA, is amended to read:

"32-3-705. Special reserves. In addition to the regular reserve account, special reserves to protect the interest of members must be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the ~~director of the~~ department of administration to be necessary."

NEW SECTION. **Section 40. Repealer.** Section 32-3-704, MCA, is repealed.

NEW SECTION. **Section 41. Codification instruction.** [Sections 2, 3, and 9 through 11] are intended to be codified as an integral part of Title 32, chapter 3, and the provisions of Title 32, chapter 3, apply to [sections 2, 3, and 9 through 11].

- END -

