

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 491

Short Title: Credit Union Regulation.

(Public)

Sponsors: Representatives Brubaker; and Hege.

Referred to: Commerce.

March 8, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE LAW REGARDING SUSPENSION OF CREDIT
3 UNION CHARTERS AND TO AUTHORIZE APPOINTMENT OF A
4 CONSERVATOR TO MANAGE THE AFFAIRS OF A CREDIT UNION WHEN
5 NECESSARY.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 54-109.92 reads as rewritten:
8 "**§ 54-109.92. Suspension. Suspension and conservation.**
9 (a) The Administrator of Credit Unions may determine in the performance of his
10 duties under this Subchapter that a credit union is insolvent or in imminent danger of
11 insolvency, or that an officer, director, or employee of a credit union, or the credit union
12 itself, acting by and through an officer, director, or employee, has:
13 (1) Violated this Subchapter, a rule adopted under this Subchapter, or any
14 law or regulation applicable to credit unions;
15 (2) Violated, neglected, or refused to comply with a duly issued final order
16 of the Administrator of Credit Unions or the Credit Union
17 Commission;
18 (3) Refused to submit to examination under oath, or to permit examination
19 of the credit union's books, papers, records, accounts, and affairs by
20 the Administrator of Credit Unions or his duly authorized
21 representative;
22 (4) Failed or refused to authorize and direct any other person to permit the
23 inspection and examination of the credit union's books, papers,
24 records, or accounts in the other person's care, possession, custody, or

1 control by the Administrator of Credit Unions or a duly authorized
2 representative of the Administrator, after the Administrator has
3 requested the granting of that authority and direction to the other
4 person; or

5 (5) Conducted the credit union's business in an unsafe, unauthorized, or
6 unlawful manner.

7 (b) If the Administrator of Credit Unions makes any of these findings, he may
8 issue an order temporarily suspending the credit union's operations for not more than 90
9 days or, if the Administrator determines that the findings are of such severity that
10 immediate affirmative action is needed to prevent further dissipation of the assets of the
11 credit union, the Administrator may immediately issue an order of conservation and
12 appoint a conservator to manage the affairs of the credit union. Service of the order of
13 suspension or the order of conservation must be by certified or registered mail,
14 addressed to the credit union at the last known address of its principal office, or by
15 delivery to an officer or director of the credit union. Service by mail is complete upon
16 the deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post
17 office or official depository under the care and custody of the United States Postal
18 Service. The order must clearly state the grounds for suspension or conservation.

19 (c) After a suspension order has been served on the credit union, the
20 Administrator of Credit Unions shall take possession and control of the books, records,
21 property, assets, and business of the credit union. The credit union shall cease all
22 operations, except those authorized by the Administrator and conducted under his
23 supervision. Not later than 15 days after the date an order of suspension or conservation
24 is served, the board of directors shall file a written reply to the order. They may file a
25 written request for a hearing to present to the Administrator a plan to continue
26 operations under the control of the board of directors setting out proposed corrective
27 actions. Under an order of suspension, the board of directors may request that a
28 conservator be appointed for the credit union or that the credit union be closed or
29 merged or that a liquidating agent be appointed, and may waive rights to further appeal.
30 In that event, the Administrator may immediately appoint a conservator, or order that
31 the credit union be liquidated and appoint a liquidating agent. Under an order of
32 conservation, the board of directors may consent to the conservatorship and waive rights
33 to further appeals.

34 (d) If the board of directors files its reply and requests a hearing as provided by
35 subsection (c), the Administrator of Credit Unions shall set and hold the hearing not less
36 than 10 nor more than 30 days after the date or receipt of such a request. The
37 Administrator shall promptly give notice to the credit union of the date, time, and place
38 of the hearing. Not later than 10 days after the earlier of the date of conclusion of the
39 hearing or the date on which the suspension expires, the Administrator shall (i) adopt
40 the plan to continue operations under the control of the board of directors presented by
41 the credit union, (ii) agree with the credit union on an alternative plan to continue
42 operations under the control of the board of directors or other appropriate measures, (iii)
43 reject the plan to continue operations under the control of the board of directors and
44 issue an order of conservation appointing a conservator, (iv) continue a previous order

1 of conservation, or (v) issue an order of liquidation ordering that the credit union be
2 closed, ordering that its affairs and business be liquidated, and appointing a liquidating
3 agent.

4 (e) If the Administrator of Credit Unions rejects the credit union's plan to
5 continue operations and determines that it is in the public interest and in the best interest
6 of the members, depositors, and creditors of the credit union to rehabilitate the credit
7 union, he may permit the credit union to operate under his direction and control, and
8 shall issue an order of conservation appointing a conservator to manage the affairs of
9 the credit union. The Administrator shall serve the order of conservation in the same
10 manner as provided for service of an order of suspension.

11 (f) The conservator, on behalf and under the supervision and direction of the
12 Administrator of Credit Unions, shall take charge of the books, records, property, assets,
13 and business of the credit union and shall conduct the business and affairs of the credit
14 union under the direction and supervision of the Administrator. The conservator shall
15 take steps toward the removal of the causes and conditions that have necessitated the
16 order that the Administrator directs. During the conservatorship, the conservator shall
17 make reports to the Administrator from time to time as the Administrator requires. The
18 conservator shall take all necessary measures to preserve, protect, and recover the assets
19 or property of the credit union, including claims or causes of action belonging to or that
20 may be asserted by the credit union. In addition, the conservator may deal with that
21 property in his own name as conservator and may file, prosecute, or defend against a
22 suit by or against the credit union if the conservator considers this action necessary to
23 protect the interested parties or property affected by the suit.

24 (g) The Administrator of Credit Unions shall determine the cost incident to the
25 conservatorship. The cost is a charge against the assets and funds of the credit union,
26 and shall be paid as the Administrator directs.

27 (h) A suit filed against a credit union or its conservator while a conservatorship
28 order is in effect must be brought in a court of proper jurisdiction in Wake County. The
29 conservator may file suit in a court of proper jurisdiction in Wake County against any
30 person for the purpose of preserving, protecting, or recovering assets or property of the
31 credit union, including a claim or cause of action belonging to or that may be asserted
32 by the credit union.

33 (i) The conservator shall serve for the period necessary to accomplish the
34 purposes of conservatorship consistent with the intent of this section. If the credit union
35 is rehabilitated, it shall be returned to the management of the board of directors under
36 the terms that are reasonable and necessary to prevent recurrence of the conditions that
37 occasioned the conservatorship.

38 (j) If the Administrator of Credit Unions determines that the credit union in
39 conservatorship is not in a condition to continue business and cannot be rehabilitated as
40 provided by this section, he may issue an order of merger or an order of liquidation,
41 appointing a liquidating agent.

42 (k) If, after a hearing under this section, the board of directors of the credit union
43 is dissatisfied with the decision of the Administrator of Credit Unions, the board may
44 appeal to the Credit Union Commission by filing with the Administrator a written

1 appeal, including a duly certified resolution of the board, not later than 10 days after the
2 day that the Administrator's order is served. If the appeal is duly filed, the
3 Administrator shall set a date for a hearing on the appeal not more than 30 days after the
4 date on which the appeal is filed. The Administrator shall promptly give notice of the
5 date, time, and place of the hearing to the credit union and any other interested party.
6 The filing of an appeal does not suspend the effect of the order of the conservation and
7 this order remains in force pending final disposition of the appeal by the Commission.
8 At the conclusion of the hearing, the Commission may reverse the order of the
9 Administrator and adopt and approve the credit union's plan to continue operations,
10 affirm the Administrator's order of conservation, or order that other appropriate action
11 be taken.

12 (l) If the board of directors of the credit union does not file a reply to the order of
13 suspension or an order of conservation as required by this section or fails to request and
14 appear at the hearing provided for by this section, the Administrator of Credit Unions
15 may dispose of the matter as he considers appropriate. The credit union is presumed to
16 have consented to the action and may not contest it.

17 (m) The period of suspension and the date and time of the hearings provided for
18 by this section may be extended by agreement of the parties and the Administrator of
19 Credit Unions.

20 (n) The Administrator of Credit Unions shall notify the members of the Credit
21 Union Commission of any suspension.

22 ~~(a) If it appears that any credit union is bankrupt or insolvent, or that it has~~
23 ~~willfully violated Articles 14A to 14L of this Chapter, or is operating in an unsafe or~~
24 ~~unsound manner, the Administrator of Credit Unions shall issue an order temporarily~~
25 ~~suspending the credit union's operations for not more than 90 days. The board of~~
26 ~~directors shall be given notice by registered mail of such suspension, which notice shall~~
27 ~~include a list of the reasons for such suspension, and/or a list of the specific violations~~
28 ~~of Articles 14A to 14L of this Chapter. The Administrator of Credit Unions shall also~~
29 ~~notify the members of the Credit Union Commission of any suspension.~~

30 ~~(b) Upon receipt of such suspension notice, the credit union shall cease all~~
31 ~~operations, except those authorized by the Administrator. The board of directors shall~~
32 ~~then file with the Administrator a reply to the suspension notice, and may request a~~
33 ~~hearing to present a plan of corrective actions proposed if it desires to continue~~
34 ~~operations. The board may request that the credit union be declared insolvent and a~~
35 ~~liquidating agent be appointed.~~

36 ~~(c) Upon receipt from the suspended credit union of evidence that the conditions~~
37 ~~causing the order of suspension have been corrected, the Administrator may revoke the~~
38 ~~suspension notice, permit the credit union to resume normal operations, and notify the~~
39 ~~Commission of such action.~~

40 ~~(d) If the Administrator, after issuing notice of suspension and providing an~~
41 ~~opportunity for a hearing, rejects the credit union's plan to continue operations, he may~~
42 ~~appoint an operating officer or trustee to correct the conditions causing the order of~~
43 ~~suspension, or he may issue a notice of involuntary liquidation and appoint a liquidating~~
44 ~~agent. The credit union may request the appropriate court to stay execution of such~~

1 ~~action. Involuntary liquidation may not be ordered prior to the conclusion of suspension~~
2 ~~procedures outlined in this section.~~

3 ~~(e) If, within the suspension period, the credit union fails to answer the~~
4 ~~suspension notice or request a hearing, the Administrator may then revoke the credit~~
5 ~~union's charter, appoint a liquidating agent and liquidate the credit union."~~

6 Sec. 2. This act is effective upon ratification.