WEST VIRGINIA CODE CHAPTER 31C ARTICLE 1

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§31C-1-1. Definitions.

In construing this chapter, the following definitions shall apply unless such application would produce a result clearly inconsistent with the context of the statutory provision.

(a) "Board of banking and financial institutions" means the board created pursuant to section one, article three, chapter thirty-one-a of this code and is referred to herein as "board."

(b) "Commissioner" means the West Virginia commissioner of banking.

(c) "Corporate credit union" means a credit union whose field of membership consists primarily of other credit unions.

(d) "Credit union" means a cooperative, nonprofit corporation, incorporated under this chapter, for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

(e) "Deposit account" means a balance held by a credit union and established by a member, another credit union or a governmental unit in accordance with standards specified by the credit union including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not confer membership or voting rights and does not represent an interest in the equity capital of the credit union upon dissolution or conversion to another type of institution. A deposit account is a debt owed by the credit union to the account holder.

(f) "Equity capital" means reserves, loan loss and investment loss allowance accounts, and undivided earnings.

(g) "Fixed asset" means a structure, land, computer hardware and software, furniture, office equipment and heating and cooling equipment that is affixed to premises.

(h) "Governmental unit" means any board, agency, department, authority, instrumentality or other unit or organizations of the federal, state, county, municipal or other level of government.

(i) "Immediate family" means one's wife or husband, and children, brothers, sisters or parents of the member or their spouse. The term "children" also includes stepchildren, foster children and adopted children.

(j) "Insolvent" means the condition that results when the institution is unable to pay its debts to its depositors, members and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency such that its assets are less than its liabilities, exclusive of equity capital. The term "about to be insolvent" means the institution would be unable to meet the demands of its depositors or members, or to make adequate

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provision for their timely payment if it were immediately closed for the purpose of liquidation.

(k) "Insuring organization" means an organization that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions shall be protected or guaranteed against loss either without limit or up to a specified level for each account.

(l) "Membership share" means a balance held by a corporate credit union and established by a member in accordance with standards specified by the corporate credit union. Ownership of a membership share represents an interest in the capital of the corporate credit union upon dissolution or conversion to another type of institution.

(m) "Organization" means any corporation, association, partnership, society, firm, syndicate, trust or other legal entity.

(n) "Person" means any natural person, organization or governmental unit.

(o) "Reserves" means allocations of retained income and includes regular and special reserves, except for any allowances for loan losses and investment losses.

(p) "Risk assets" means all assets other than cash on hand, deposits and/or shares in federally or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of five years or less, or which otherwise qualify as risk assets as set forth in 12 CFR 700.1(i) and shall include membership shares in corporate credit unions.

(q) "Share account" or "shares" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union including balances designated as shares, share certificates, share draft accounts or other names. However, it does not include membership shares issued by a corporate credit union. Ownership of a share account confers membership and voting rights and represents an interest in the equity capital of the credit union upon dissolution or conversion to another type of institution.

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§31C-1-2. Authority of commissioner and board of banking and financial institutions.

The commissioner of the department of banking shall be responsible for the supervision and regulation of credit unions incorporated under this chapter or previously incorporated under this code. The commissioner is specifically charged with administering the supervisory and regulatory responsibilities set forth in this chapter, in conjunction with the board of banking and financial institutions as set forth in section two, article three, chapter thirty-one-a of this code.

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§31C-1-3. Powers of commissioner.

(a) The commissioner may prescribe rules to implement any provision of this chapter and to define any term not defined in the chapter. Such rules shall serve to foster and maintain an effective level of credit union services and the security of member accounts.

(b) The commissioner may restrict the withdrawal of share or deposit accounts or both from any credit union having determined circumstances make such restriction necessary for the proper protection of shareholders or depositors.

(c) The commissioner may issue cease and desist orders pursuant to section four, article two, chapter thirty-one-a of this code if a credit union is engaged or has engaged, or when the commissioner has reasonable cause to believe the credit union is about to engage, in an unsafe or unsound practice, or is violating or has violated or the commissioner has reasonable cause to believe is about to violate a material provision of any law, rule or any condition imposed in writing by the commissioner or any written agreement made with the commissioner.

(d) The commissioner 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 of a cease and desist order or who has engaged 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 which constitutes a breach of that person's fiduciary duty as such director, officer or committee member, when the commissioner has determined that such action or actions have resulted or will result in substantial financial loss or other damage that seriously prejudices the interests of the members.

(e) The commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the commissioner.

(f) The commissioner may enter into cooperative, coordinating or information-sharing agreements with any other state or federal credit union supervisory agency or any organization affiliated with or representing one or more credit union supervisory agencies.

(g) The commissioner shall also in connection with the supervision of credit unions have all powers set forth in article two, chapter thirty-one-a of this code relating to the regulation of credit unions as financial institutions and to any subsidiary or affiliate organization of such credit union.

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§31C-1-4. Suspension; involuntary liquidation.

(a) If it appears that any credit union is bankrupt, insolvent, about to be insolvent or that it has willfully violated this chapter, or is operating in an unsafe or unsound manner, the commissioner may, without prior hearing, issue an order temporarily suspending the credit union's operations. The credit union's board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and a list of the specific violations of this chapter, if any. The commissioner shall also notify the insuring organization and the board of banking and financial institutions of any suspension.

(b) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the commissioner. The credit union's board of directors shall then file with the commissioner a reply to the suspension notice within five business days of its receipt, and must therein request a hearing to be held within sixty days to present a plan of corrective actions proposed if they desire to continue operations. Alternatively, the credit union's board of directors may request that the credit union be declared insolvent and a liquidating agent be appointed.

(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the commissioner may revoke the suspension notice, permit the credit union to resume normal operations, and notify the insuring organization and the board of banking and financial institutions of such action.

(d) If the commissioner, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, or if the commissioner after accepting or directing a plan for continued operations finds that the credit union has failed to comply with the plan's substantive corrective provisions, then the commissioner may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union shall be given at least sixty days in which to take corrective action upon acceptance or issuance of any corrective plan by the commissioner. The credit union may request the appropriate court to stay execution of an involuntary liquidation sought under this subsection. However, nothing in this section prevents the commissioner from appointing a conservator pursuant to section three, article seven, chapter thirty-one-a of this code, including a temporary appointment of a conservator pending the correction of the conditions causing the suspension, or appointing a receiver and seeking to liquidate the credit union pursuant to section four, article seven, chapter thirty-one-a of this code when necessary in order to protect the interest of the credit union's members and depositors.

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

(f) In the event of liquidation, the assets of the credit union or the proceeds from any disposition of the assets shall be applied and distributed in the following sequence:

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(1) Secured creditors up to the value of their collateral;

(2) Costs and expenses of liquidation;

(3) Wages due the employees of the credit union;

(4) Costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the commissioner;

(5) Taxes owed to the United States or any other governmental unit;

(6) Debts owed to the United States;

(7) General creditors, secured creditors to the extent their claims exceed the value of their collateral and owners of deposit accounts to the extent such accounts are uninsured;

(8) Members, to the extent of uninsured share accounts and the organization that insured the accounts of the credit union; and

(9) Members of a corporate credit union, to the extent of membership shares.

As soon as the appointed liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, a certificate of dissolution shall be executed on a form prescribed by the commissioner and filed with the Secretary of State, which shall after filing and indexing same, be forwarded to the commissioner, whereupon the credit union shall be dissolved. The liquidating agent shall return all pertinent books and records of the liquidating credit union to the commissioner.

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§31C-1-5. Examinations.

(a) The commissioner shall examine, or cause to be examined, each credit union at least once every eighteen months. A credit union and any of its officers and agents shall be required to give the commissioner, or the commissioner's representatives, full access to all books, papers, securities, records and other sources of information under their control.

(b) A report of such examination shall be forwarded to the credit union's board of directors within thirty days after completion. Said report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within thirty days after the receipt of such report, the directors and committee members shall meet to consider matters contained in the report. Every official communication from the commissioner to any such institution, or to any officer thereof, relating to an examination or an investigation of the affairs of such institution conducted by the commissioner or containing suggestions or recommendations as to the manner of conducting the business of the institution, shall be read to the board of directors at the next meeting after the receipt thereof, and the president, or other executive officer, of the institution shall within fourteen days of such meeting notify the commissioner in writing of the presentation and reading of the communication and of any action taken thereon by the institution.

(c) In lieu of making an examination of a credit union, the commissioner may accept an examination or audit report of the condition of the credit union made by the national credit union administration.

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§31C-1-6. Records.

(a) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the commissioner from time to time prescribes. In prescribing such rules, the commissioner shall consider the relative size of a credit union and its reasonable capability of compliance. Unless otherwise required or permitted by a specific rule, credit unions shall follow the record retention requirements set forth in section thirty-five, article four, chapter thirty-one-a of this code.

(b) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by subsection (a) of this section, except for any records involved in an official investigation or examination about which the credit union has received notice.

(c) Reproduction of any credit union records shall be admissible as evidence of transactions with the credit union as provided in section seven-b, article one, chapter fifty-seven; and section thirty-five, article four, chapter thirty-one-a of this code.

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§31C-1-7. Reports.

(a) Credit unions shall report to the Commissioner semiannually during January and July of each calendar year on a date set by the Commissioner for the business periods ending June 30 and December 31, respectively on forms supplied by the Commissioner for that purpose. Additional reports may also be required.

(b) A charge of $100 shall be levied for each day a credit union fails to provide a required report unless it is excused for cause by the Commissioner or courts.

(c) The fiscal year of each credit union incorporated under this chapter shall end on the last day of December.

(d) In addition to other reports that may be required under this chapter, every credit union with a main office or branch located in this state shall file with the Commissioner on or before September 1, of each year the amount of deposits and shares held by each office in this state (excluding automated teller machines) as of the immediately preceding thirtieth day of June.

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§31C-1-8. Assessments.

The commissioner of banking shall charge and collect from each credit union and pay into a special revenue account in the State Treasury for the department of banking an annual assessment payable on July 1, computed upon the total assets of the credit union shown on the report of condition of the credit union as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

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