WEST VIRGINIA CODE CHAPTER 31C ARTICLE 2

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§31C-2-1. Organization procedure.

(a) Any eight or more residents of this state, of legal age, who share the common bond referred to in section one, article four of this chapter, may organize a credit union and become charter members thereof by complying with this section.

(b) The incorporators shall prepare, adopt and execute in duplicate articles of incorporation and agree to the terms thereof. The articles shall state:

(1) The credit union's name and the address of the proposed credit union's principal place of business;

(2) That the existence of the credit union shall be perpetual;

(3) The names and addresses of the incorporators to the articles of incorporation, and the number of shares subscribed to by each, which for each incorporator shall be not less than one share; and

(4) The par value of each share to be issued.

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

(1) The conditions and qualifications of membership;

(2) The conditions upon which shares may be issued, transferred and withdrawn;

(3) The number of directors, their powers and duties; and the compensation and duties of all officers;

(4) The date of the annual meeting and requirements as to notice and manner of conducting such meeting;

(5) The term of service for directors, which terms shall be staggered so that an approximately equal number expire each year;

(6) The number and term of service for supervisory committee members, together with their powers and duties;

(7) The number and the term of service for credit committee members, unless the bylaws provide for the board of directors to act as the credit committee, and their respective powers and duties;

(8) The purposes and conditions upon which loans may be made;

(9) The manner of a member's appeal for a loan application disapproved by a loan officer, if the bylaws provide for the appointment of loan officers; and

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(10) The par value of shares, and where applicable in corporate credit unions, any membership shares.

(d) The incorporators shall select at least five persons who are eligible for membership and who agree to become members and serve on the board of directors, and at least three other persons who are eligible for membership and who agree to become members and serve on the supervisory committee. The persons selected to serve on the board of directors and supervisory committee shall execute an agreement to serve in these capacities until the first annual meeting or until the election of their respective successors, whichever is later.

(e) The incorporators shall provide to the commissioner an affidavit of the expenses incurred or anticipated in the organization of the credit union.

(f) In their application to obtain a certificate of charter the incorporators shall forward to the commissioner the duplicate articles of incorporation and bylaws and the agreements to serve. The submission of these documents shall be accompanied by an investigation fee of $100 payable to the commissioner.

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§31C-2-2. Certification of charter; and certificate of authority.

(a) The commissioner shall review the incorporation agreement and bylaws together with other information submitted as the commissioner may prescribe and complete the examination and investigation on an application to charter a credit union within ninety days, unless a written request for additional information or disclosures are made by the commissioner, in which event, the period of ninety days shall be extended an additional thirty days. Upon public hearing and obtaining written approval by order of the commissioner, the agreement and bylaws, both executed in duplicate, together with a certified copy of the order and applicable corporation chartering fees shall be forwarded to the Secretary of State for processing as in the case of any other corporate charter application. A certificate of charter shall be approved by the commissioner if the articles and bylaws are in conformity with this chapter and the commissioner is satisfied that:

(1) The characteristics of the common bond set forth in the proposed bylaws are favorable to the economic viability of the proposed credit union;

(2) The proposed capital structure is adequate;

(3) Provision has been made for suitable quarters from which to conduct the business of a credit union; and

(4) The reputation, character and abilities of the initial board of directors and supervisory committee provide assurance that the credit union's affairs will be properly administered.

(b) The Secretary of State shall upon receipt of any applicable fees, file and record the incorporation charter, and return a copy of the bylaws and one of the duplicate originals of the articles of incorporation to the incorporators or their representatives. The original articles and bylaws shall be preserved in the permanent files of the credit union.

(c) Any order to grant or deny a certificate of charter shall be accompanied by findings of fact and conclusions of law upon which the decision was based. If a certificate of charter is denied by the commissioner, he or she shall notify the incorporators and provide a copy of the order, which shall set forth reasons for the denial. The commissioner's decision may be appealed to the board of banking and financial institutions within thirty days, and if no appeal is made of an order to deny the application, the agreement of incorporation, the corporation chartering fees, and any other papers filed therewith shall be promptly returned to the attorney, agent or other responsible person representing the incorporators in the application.

(d) Upon receipt of a certificate of charter, the incorporators of the credit union shall promptly apply to the commissioner for a certificate of authority to engage in business and comply with the provisions of section five, article two, chapter thirty-one-a of this code, in advance to the issuance of the credit union's certificate of authority. The incorporators shall likewise comply with other provisions of this chapter relating to completion of its corporate

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organization, and the corporation’s readiness to commence business as a credit union.

(e) Upon the credit union's application, and the examination, approval and receipt of a certificate of authority from the commissioner, a credit union may commence to engage in business. The procedure and criteria for the certificate of authority licensure shall be those set forth in section five, article two, chapter thirty-one-a of this code for nonbank financial institutions.

(f) The certificate of authority shall be preserved and displayed in the place of business of the credit union.

(g) If a certificate of authority is denied by the commissioner, he or she shall notify the applicant and set forth reasons for the denial. The credit union may appeal the commissioner's decision to the board of banking and financial institutions within thirty days.

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§31C-2-3. Articles and bylaws.

(a) In order to simplify the organization of credit unions, the commissioner may cause to be prepared model articles of incorporation and bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available to persons desiring to organize a credit union.

(b) The articles of incorporation and the bylaws may be amended as provided in the articles and bylaws, respectively. Amendments to the articles of incorporation or bylaws shall be submitted to the commissioner who shall approve or disapprove the proposed amendments within sixty days.

(c) Amendments shall become effective upon approval in writing by the commissioner. If the commissioner disapproves any proposed amendment, the credit union may appeal the decision to the board within thirty days.

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§31C-2-4. Use of name exclusive.

(a) The name of every credit union organized under this chapter shall include the phrase "credit union." No credit union may adopt a name either identical to the name of any other credit union doing business in this state or so similar to the name of any other credit union doing business in this state as to be misleading or to cause confusion.

(b) No person, other than a credit union incorporated under this chapter, the Federal Credit Union Act or a credit union authorized to do business in this state under section six, article two of this chapter, an association of credit unions, or an organization, corporation or association whose membership or ownership is primarily limited to credit unions or credit union organizations, may use a name or title containing the phrase "credit union" or any derivation thereof, represent itself as a credit union or conduct business as a credit union.

(c) Violation of this section constitutes a misdemeanor punishable by a fine of not more than $100 for each day of illegal use of such name, by imprisonment for not more than one year, or both.

(d) The commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.

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§31C-2-5. Branches and other service facilities.

(a) A credit union may change its principal place of business within this state upon notice to, and approval in writing of, the commissioner.

(b) A credit union may maintain other service facilities and branches, including automated teller machines (ATMs), at locations other than its principal office upon notice to and approval in writing of the commissioner. The maintenance of such facilities must be reasonably necessary to furnish service to its members. The creation of such facilities must be approved by a majority vote of the credit union's board of directors.

(c) A credit union may, upon notice and approval in writing of the commissioner, join with one or more other credit unions or other financial organizations in the operation of automated teller machines (ATMs) or other service facilities. The joint operation of such facilities must be approved by a majority of the credit union's board of directors.

(d) To the extent that a credit union provides its members access to their accounts through a remote service unit, such as an ATM or point-of-sale (POS) device, the credit union shall be governed by the same rules of the commissioner pertaining to banks operating through customer bank communication terminals (CBCTs).

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§31C-2-6. Out-of-state credit unions.

(a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union through a branch or service facility in this state with the approval by written order of the commissioner, provided credit unions incorporated under this chapter are allowed to do business in the other state under conditions similar to these provisions. Unless the context clearly requires otherwise, the term "territory of the United States", as used in this chapter, includes the District of Columbia. The commissioner shall, after filing a public notice of the application, hold a public hearing to consider the application: Provided, That a hearing may be waived by the commissioner if no objection to the application is received within ten days after the filing of the public notice. Public notice of the application shall be provided by posting it on the division's website, filing it with the secretary of state for inclusion in the state register, and mailing or electronically providing a copy to all banking institutions and credit unions who have requested notice of any such application. The request by any such banking institution or credit union to receive such notice shall be in writing and shall request the commissioner to notify it of the receipt by the commissioner of any application to conduct business by a credit union pursuant to this section.

(b) Before granting approval, the commissioner shall enter an order finding that the applicant out-of-state credit union:

(1) Is a credit union organized and operating under standards recognized as appropriate pursuant to the provisions of this chapter;

(2) Is financially solvent and has an adequate capital structure;

(3) Has account insurance as required for credit unions incorporated under this chapter;

(4) Has a board of directors and supervisory committee with the reputation, character and abilities to provide assurance that the credit union's affairs will be properly administered;

(5) Has in connection with any office of operations in this state made provision for suitable quarters from which to conduct the business of a credit union;

(6) Is examined and supervised by a regulatory agency of the state or territory in which it is organized; and

(7) Needs to conduct business in this state to adequately serve its members in this state.

(c) No out-of-state credit union may conduct business in this state unless it:

(1) Complies with the limits on finance charges applicable to credit unions set forth in section two, article seven of this chapter when making loans in this state;

(2) Complies with the consumer protection statutes and rules applicable to credit unions

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incorporated under this chapter;

(3) Agrees to furnish the commissioner a copy of the report of examination of its regulatory agency, and if deemed necessary by the commissioner, to submit to an examination by the commissioner, the cost of which shall be paid for by the credit union; and

(4) Designates and maintains an agent for the service of process in this state.

(d) The commissioner may revoke the approval of a credit union to conduct business in this state if the commissioner finds that:

(1) The credit union no longer meets the requirements of subsection (a) of this section;

(2) The credit union has violated the laws of this state or lawful rules or orders issued by the commissioner;

(3) The credit union has engaged in a pattern of unsafe or unsound credit union practices; or

(4) 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.

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§31C-2-7. Conducting business outside this state.

A credit union incorporated 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. The activities and records of such credit union business conducted outside this state remain fully under the jurisdiction and supervision of the commissioner. Prior to the establishment of any branch or service facility outside this state, a credit union shall provide notice to, and obtain written approval of, the commissioner. The creation of such facilities must be approved by a majority vote of the credit union's board of directors.

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§31C-2-8. Tax exemption.

(a) Any credit union organized under this or any other credit union act and all shares and deposits therein shall be exempt from all taxation now or hereafter imposed by this state or any taxing authority within this state. No law which taxes corporations in any form, or the shares or deposits thereof, or the accumulation thereon, shall apply to any such credit union; except that any real property and any tangible personal property owned by any such credit union shall be subject to taxation to the same extent as other similar property is taxed: Provided, That this exception shall not permit the imposition of any sales or use taxes on the credit union.

(b) The shares of any such credit union shall not be subject to stock, transfer taxes, either when issued or when transferred from one member to another.

(c) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

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§31C-2-9. Credit unions heretofore organized need not obtain new charter; actions validated.

All credit unions which have been heretofore legally organized under chapter thirty-six of the acts of the Legislature of one thousand nine hundred twenty-five, and which are in existence on the effective date of this section; and all credit unions which have been heretofore legally organized under article ten of chapter thirty-one of the Code of West Virginia, 1931, as amended, and which are in existence on the effective date of this section, shall upon the effective date of this section be considered to have been organized under the provisions of this article, and shall not be required to obtain a new charter or to reorganize hereunder. All acts and things done by any such credit unions, insofar as such acts and things shall not have constituted any violation of law as it shall heretofore have existed, shall be deemed valid and effective.

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