WEST VIRGINIA CODE CHAPTER 31C

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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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§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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§31C-3-1. General powers.

In addition to the powers mentioned elsewhere in this chapter, a credit union may:

(a) Enter into contracts necessary for the conduct of its business as authorized under this statute;

(b) Sue and be sued;

(c) Adopt, use and display a corporate seal;

(d) Acquire, lease, hold, assign, sell, discount or otherwise dispose of property or assets, either in whole or in part, necessary or incidental to its operation;

(e) Borrow from any source: Provided, That a credit union must obtain approval of the commissioner in writing of its intention to borrow in excess of an aggregate of twenty percent of its equity capital and shares, and in no event shall its borrowing be in excess of an aggregate of fifty percent of its equity capital and shares;

(f) Purchase the assets of another credit union;

(g) Offer related financial services, including, but not limited to, electronic fund transfers, safe deposit boxes, leasing and correspondent arrangements with other financial institutions;

(h) Hold membership in other credit unions organized under this or other acts, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(i) Engage in activities and programs as requested by any governmental unit;

(j) Act as fiscal agent for and receive payments on share and deposit accounts from a governmental unit;

(k) Make contributions to any nonprofit civic, charitable or service organizations;

(l) Receive the savings of its members either as payment on shares, or as deposits (including the right to conduct Christmas clubs, vacation clubs and other thrift organizations within the membership);

(m) Make loans for provident, productive, nonspeculative purposes to members, including a cooperative society or other organization having membership in the credit union.

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§31C-3-2. Incidental powers.

A credit union may exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes.

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§31C-3-3. Advantageous federal powers.

Unless exercise of a power is specifically denied, the commissioner may prescribe rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it appropriate for the purposes of credit unions in this state and a benefit to their members.

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§31C-4-1. Membership defined.

(a) The membership of a credit union shall consist of those persons who share a common bond set forth in the bylaws, have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares and have complied with such other requirements as the articles of incorporation and bylaws specify.

(b) Credit union membership shall be limited to, persons within one or more groups having a common bond or bonds of similar occupation, employer, association or interest, and members of the immediate family of such persons.

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§31C-4-2. Organizations.

(a) Organizations comprised primarily of individuals who are eligible for membership in the credit union, and corporations whose total number of stockholders or whose majority stockholders are comprised primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals. Likewise, organizations one of whose principal functions is to provide services to persons who are eligible for membership in the credit union may be admitted to membership. Other organizations having a commonality of interest with the credit union may be admitted to membership with the approval of the commissioner.

(b) Any corporate credit union organized under this chapter may accept as a member any other credit union organized under this or any other act.

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§31C-4-3. Membership applications.

The board of directors of the credit union shall act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the credit union's board of directors.

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§31C-4-4. Members who cease to be eligible.

Members who cease to be eligible for membership may be permitted to retain their membership in the credit union, under reasonable standards established by the credit union's board of directors.

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§31C-4-5. Liability and expulsion of members.

(a) The members of the credit union shall not be personally or individually liable for the payment of its debts solely by virtue of holding membership.

(b) Any member may be expelled by a two-thirds vote of its members present at any regular meeting or a special meeting called to consider the matter, but only after an opportunity has been given the member to be heard.

(c) The credit union's board of directors may expel a member pursuant to a written policy adopted by it. All members shall be given written notice of the terms of any such policy upon becoming a member. Any person expelled by the credit union's board of directors shall have the right to request a hearing before it to reconsider the expulsion.

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§31C-4-6. Meetings of members.

(a) The annual meeting and any special meetings of the members of the credit union shall be held in accordance with the bylaws.

(b) At all such meetings a member shall have but one vote, irrespective of the member's shareholdings. No member may vote by proxy, but a member may vote by absentee ballot, mail or other method if the bylaws of the credit union so provide.

(c) The credit union's board of directors may establish a minimum age, not greater than eighteen years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

(d) An organization having membership in the credit union, may be represented and have its vote cast by one of its members or shareholders, provided such person has been so authorized by the organization's governing body.

WV Legislature

§31C-4-7. Calling of special meeting.

(a) The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's articles of incorporation or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized; and may call a special meeting to consider the suspension or removal of any officer or director of the credit union as provided for in this chapter.

(b) The bylaws may also prescribe the manner in which a special meeting of the members may be called by the members or by the credit union's board of directors or both.

(c) The commissioner may also require the directors of a credit union to call a special meeting of the members pursuant to his or her authority under section nine, article two, chapter thirty-one-a of this code.

WV Legislature

§31C-5-1. Authority and responsibility of directors.

The credit union's board of directors shall have the authority and responsibility for directing the business affairs, funds and records of the credit union. In addition to the duties found elsewhere in this article, it shall be the special duty of the credit union's board of directors to:

(a) Purchase adequate fidelity coverage for the chief executive officer and for other active officers and employees handling or having custody of funds or property;

(b) Authorize the employment and compensation of the chief executive officer who shall hire such other persons necessary to carry on the business of the credit union;

(c) Approve an annual operating budget for the credit union;

(d) Authorize the conveyance of property;

(e) Borrow or lend money to carry on the functions of the credit union;

(f) Appoint any special committees deemed necessary;

(g) 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.

The credit union's board of directors shall meet each month. The board may meet at other times as is necessary. Board meetings may be conducted by means of telephone as provided in the bylaws in a manner consistent with state law.

WV Legislature

§31C-5-2. Election of directors and selection of supervisory and credit committee members.

(a) The credit union's board shall consist of an odd number of directors, at least five in number, to be elected by and from the members. Elections shall be held at the annual meeting or in such other manner as the bylaws provide. All members of the credit union's board shall hold office for such terms as the bylaws provide, except that terms shall be staggered so that an approximately equal number expire each year.

(b) A supervisory committee of not less than three persons shall either be elected by the membership at the annual meeting or appointed by the credit union's board of directors at the organization meeting held within thirty days following each annual election for such terms as the bylaws provide.

(c) At the same organization meeting, the credit union's board of directors shall appoint a credit committee, unless the bylaws provide for the board of directors to act as the credit committee. The committee shall consist of an odd number, not less than three, whose terms shall be as the bylaws provide.

WV Legislature

§31C-5-3. Record of officials; and filling vacancies.

(a) Within twenty days after each organization meeting, a record of the names and addresses of the members of the board and such other committees and officials, as required by the commissioner, shall be filed with the commissioner.

(b) The credit union's board of directors shall fill any vacancies occurring in the board until successors elected at the next annual election have qualified. The credit union's board shall also fill vacancies in the credit committee and, if appointed by them, the supervisory committee. If the supervisory committee is elected by the members, then any vacancies thereon shall be filled by selection by the remaining supervisory committee members.

WV Legislature

§31C-5-4. Compensation of officials; and conflicts of interests.

(a) No officer, director or committee member, other than an employee, may be compensated for services, except as provided in section one, article five of this chapter. However, providing reasonable life, health, accident and similar insurance protection shall not be considered compensation. Directors, officers and committee members may be reimbursed for necessary expenses incidental to the performance of official business of the credit union.

(b) No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership or association (other than the credit union) in which that person is directly or indirectly interested.

WV Legislature

§31C-5-5. Officers.

(a) At their organization meeting held within thirty days following each annual election, the credit union's board of directors shall elect from their own number a chairman of the board, one or more vice chairmen, a treasurer and a secretary. The office of secretary and treasurer may, if the bylaws so provide, be held by one person. They shall also elect any other officials that are specified in the bylaws.

(b) The terms of the officers shall be one year, or until their successors are chosen and have been duly qualified.

(c) The duties of the officers shall be prescribed in the bylaws.

(d) The credit union's board of directors shall appoint a president to act as the chief executive officer of the credit union and be in active charge of its operations.

(e) Notwithstanding any other provision of this chapter, a credit union may use any titles it chooses for the officials holding the positions described in this chapter, as long as such titles are not misleading.

WV Legislature

§31C-5-6. Executive committee.

The credit union's board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized to act for the board in all respects. These actions are subject to subsequent review by the full credit union's board of directors and any other conditions or limitations prescribed by the board of directors.

WV Legislature

§31C-5-7. Credit committee and loan officers.

(a) The credit committee shall have the general supervision of all loans to members. It may approve or disapprove loans, subject to written policies established by the board of directors.

(b) The credit committee shall meet as often as the business of the credit union requires to consider applications for loans and/or review the work of the loan officers. No loan shall be made by the credit committee unless it is approved by a disinterested majority of the committee who are present at the meeting at which the application is considered.

(c) If the bylaws so provide, the board of directors may act as the credit committee.

(d) The credit union's board of directors or credit committee may appoint one or more loan officers and delegate the power to approve or disapprove loans, subject to such limitations or conditions as the credit committee or credit union's board of directors prescribes.

(e) A member whose application was disapproved by a loan officer may appeal such action to the credit committee or credit union's board of directors, as appropriate under the bylaws.

WV Legislature

§31C-5-8. Audits.

(a) The supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the credit union's board of directors and a summary of that report to the members at the next annual meeting of the credit union. Such reports shall be filed and preserved with the records of the corporation.

(b) The supervisory committee of not less than three elected or appointed members shall make or cause to be made such supplementary audits, examinations and verifications of members' accounts as it deems necessary or as are required by the commissioner or by the credit union's board of directors, and submit reports of these supplementary audits to the credit union's board of directors.

(c) The workpapers of any audit, including any materials associated with an audit of the credit union's electronic data procedures, shall be made available to the commissioner or to the examiners of the department of banking upon request, and will be accorded confidentiality in conformity with section four, article two, chapter thirty-one-a of this code.

WV Legislature

§31C-5-9. Fidelity bonds, required oaths and hazard insurance.

(a) As a condition precedent to qualification or entry upon the discharge of their duties, all active officers, as well as every person appointed or elected to any position requiring the receipt, payment or custody of money or other personal property owned by a credit union or in its custody or control as collateral or otherwise, shall give a bond in some responsible corporate surety company, licensed to do business in this state, in such sufficient amount as the credit union directors shall require and approve. The bonds shall provide for indemnity to the credit union on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission by such persons acting independently or in collusion or combination with others. The bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the credit union.

(b) No officer or employee who is required to give bond shall be deemed qualified nor shall be permitted to enter upon the discharge of their duties until their bond shall have been approved by a majority of the credit union's board of directors.

(c) The credit union's board of directors shall also direct and require suitable insurance protection to the credit union against burglary, robbery, theft and other insurable hazards to which the credit union may be exposed in the operations of its business on the premises or elsewhere.

(d) The credit union's board of directors shall be responsible for prescribing at least once each year the amount or penal sum of the bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. This action shall be recorded in the minutes of the board of directors. At any time the commissioner may require additional bond or security, when, in his or her opinion, the bonds then executed and approved are insufficient.

(e) Upon their election or appointment each director, officer and member of a committee shall individually make an oath that they will, as far as the duty devolves upon them, diligently and honestly administer the affairs of the credit union, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to the credit union, and that they are each the owner in good faith in their own right on the books of the credit union of at least one share therein. This oath shall be subscribed by the individual making it, and be certified by the officer before whom it was taken, and shall immediately be transmitted to the commissioner and filed and preserved in his or her office.

WV Legislature

§31C-5-10. Suspension and removal of officials.

(a) The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the credit committee and shall report such action to the credit union's board of directors. The credit union's board of directors shall meet not less than seven nor more than twenty-one days after such suspension to take appropriate action.

(b) The supervisory committee by a two-thirds vote of the entire committee may recommend suspension of any officer or member of the credit union's board of directors. A meeting of a quorum of the remaining board members shall convene in person and take action on the recommendation, which meeting shall be held not less than seven nor more than twenty-one days after such proposed suspension. The suspension matter shall be acted upon at the board meeting and the person shall either be removed for cause or restored to office. If the supervisory committee is not satisfied with the board's action, it may call a special meeting of the members or elect to bring the matter before the next member's regular meeting, and the issue will be acted upon at the meeting by the members and the person shall either be removed for cause, or reaffirmed to office. At any such member's meeting the person at issue shall have the right to appear and be heard.

(c) Any member of the supervisory committee or of the credit committee may be suspended or removed for cause by the board of directors by a two-thirds vote of those present at a meeting for failure to perform duties in accordance with this chapter, the articles of incorporation or the bylaws. The committee member shall have the right to appear and be heard at such meeting.

WV Legislature

§31C-5-11. Inspection of books and records by members.

(a) Each credit union shall keep at its principal office in this state a record of the names and addresses of its members entitled to vote. A credit union shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Any member or group of members of a credit union, upon making a demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and records of members and to make extracts therefrom.

(b) The right to examination authorized by subsection (a) of this section and any right to inspect the list of members provided by a credit union's bylaws to an extent greater than that provided by this section may be denied to any member or group of members upon the refusal of any such member or group of members to furnish the credit union with an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the credit union.

(c) Notwithstanding any provision of this section or common law, no member or group of members shall have the right to obtain, inspect or copy any portion of any books or records of a credit union containing:

(1) Individual deposit or loan balances or records regarding other credit union members or information respecting their personal affairs; or

(2) Any data from which such information could be reasonably constructed.

(d) For purposes of this section, a confidential record includes, but is not limited to, the following:

(1) Any document or information relating to a nonpublic market strategy or plan of the credit union;

(2) Any document or information relating to matters declared confidential under state or federal law, including, but not limited to, credit union regulatory reports; and

(3) Any document or information deemed by the credit union as proprietary relating to the loan policy established by the credit union.

WV Legislature

§31C-6-1. Share accounts and membership shares.

(a) Share accounts and membership shares (if any) shall be subscribed to and paid for in such a manner as the bylaws prescribe.

(b) A corporate credit union may require its members to subscribe to and make payments on membership shares.

(c) The par value of shares and any membership shares shall be as prescribed in the bylaws. Par value of shares shall not be less than $1 nor more than $10 per share.

(d) Membership shares may not be pledged as security on any loan.

(e) A credit union may limit the number of shares which may be owned by a member, but any such limit shall apply alike to all members.

WV Legislature

§31C-6-2. Dividends.

(a) The credit union's board of directors shall establish the dividend period. Rates of dividends and the terms of payment may be established in advance by action of the board of directors. Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

(b) The commissioner may, if circumstances warrant, establish the maximum dividend that a credit union or corporate credit union may pay in each classification of its savings.

WV Legislature

§31C-6-3. Deposit accounts.

(a) A credit union may accept deposit accounts from its members, other credit unions and governmental units subject to the terms, rates and conditions established by the board of directors.

(b) Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

(c) Funds in share and deposit accounts may be withdrawn for payment to the account holder or to third parties, in such manner and in accordance with such procedures as are established by the board of directors, subject to any rules the commissioner prescribes.

(d) Share and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws.

(e) A membership share may not be redeemed or withdrawn except subject to the terms set forth by the corporate credit union.

WV Legislature

§31C-6-4. Minor accounts.

Payments on share and deposit accounts may be received from a minor who may withdraw funds from such accounts including the dividends and interest thereon. Payments on share and deposit accounts by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full majority age.

WV Legislature

§31C-6-5. Joint accounts.

(a) A member may designate any person or persons to own a share or deposit account with the member in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law, but no co-owner, unless a member in own their right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

(b) Payment of part or all of such accounts to any of the co-owners shall, to the extent of such payment, discharge the liability to all unless: (1) The account agreement contains a prohibition or limitation on such payment; or unless (2) the credit union had received notice in writing signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof, prior to its payment. The commissioner may promulgate rules regarding notice to joint account holders of their rights and liabilities under this section.

WV Legislature

§31C-6-6. Trust accounts.

(a) Share and deposit accounts may be owned by a member in trust for a beneficiary, or owned by a nonmember in trust for a beneficiary who is a member.

(b) Beneficiaries may be minors, but no beneficiary unless a member in that person's own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

(c) Payment of part or all of such a trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of such payment.

(d) In the event of the death of the party who owns a trust account, if the credit union has been given no other written notice of the existence or terms of any trust and has not received a court order as to disposition of the account, account funds and any dividends or interest thereon shall be paid to the beneficiary.

(e) The operation of trust accounts as permitted in this section does not constitute engaging in a trust business as set forth in chapter thirty-one-a of this code.

WV Legislature

§31C-6-7. Payable-on-death accounts.

Notwithstanding any other provision of law a credit union may establish share and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable-on-death payees. An account established under this section must be identified as a "payable-on-death" account or abbreviated as a "p.o.d." account. Any transfer to a payable-on-death payee is effective by reason of the account contract and shall not be considered to be a testamentary transfer.

WV Legislature

§31C-6-8. Liens.

The credit union shall have a general lien on the share accounts, any membership shares, and accumulated dividends of a member for any sum owed the credit union by said member and for any loan endorsed by that member. The credit union shall also have a right of immediate set-off with respect to every deposit account. The credit union may also refuse to allow withdrawals from any share or deposit account. The credit union may waive its rights to a lien, to immediate set-off, to restrict withdrawals, or to any combination of such rights with respect to any share or deposit account or groups of such accounts.

WV Legislature

§31C-6-9. Share and deposit insurance.

(a) Before the incorporators of a credit union forward the corporate documents to the commissioner under subsection (d), section two, article two of this chapter they shall apply for insurance on share and deposit accounts from the national credit union administration under Title II of the Federal Credit Union Act (12 U.S.C. §1781 et seq.).

(b) A credit union which has lost its commitment for such insurance shall within thirty days commence steps to either liquidate, or merge with an insured credit union or apply in writing to the commissioner for additional time to obtain another insurance commitment. The commissioner may grant one or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment.

(c) No persons shall be granted a certificate of authority to engage in business by the commissioner to operate a credit union unless they have obtained a commitment for insurance of its share and deposit accounts.

(d) The commissioner may make available reports of condition and examination findings to the appropriate insuring organization and may accept any report of examination made on behalf of such organization.

(e) A state-chartered corporate credit union must only apply for and maintain share and deposit insurance in the amounts and of the same kind as would be required for a similarly situated federally chartered corporate credit union.

WV Legislature

§31C-6-10. Reduction in shares.

(a) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed the aggregate of its undivided earnings, reserves and membership shares if any, so that the estimated value of its assets is less than the total amount of share accounts, and the board of directors determines that the credit union may be subject to involuntary liquidation, the credit union board may propose a reduction in shares. The credit union may by a three-fourths majority vote of those voting on the proposition order a reduction in the share accounts of each of its shareholders to divide the loss in proportion to the shareholdings held by shareholders in their respective share accounts.

(b) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be proportionately restored to the shareholders whose assets were reduced, but only to the extent of such reduction.

WV Legislature

§31C-7-1. Purpose and conditions of loans.

A credit union may loan to members for such purposes and upon such conditions as the bylaws may provide. The board of directors shall establish written policies with respect to the granting of loans and the extending of lines of credit, including the terms, conditions and acceptable forms of security.

WV Legislature

§31C-7-2. Finance charge.

The finance charges imposed by the credit union on loans shall be determined by the credit union's board of directors, subject to the limitations established by this state. Unless otherwise permitted or prescribed by this code, the finance charge rate shall not exceed one and one-half percent per month, computed on unpaid balances.

WV Legislature

§31C-7-3. Additional charges.

(a) In addition to interest on loans, a credit union may charge members reasonable expenses in connection with the making, closing, disbursing, extending or renewing of loans.

(b) A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner. A credit union may also assess charges for other benefits, including insurance, as allowed for lenders under law.

(c) Any charges in connection with a consumer loan, including late charges and deferral charges, permitted under this section shall conform and be limited to those allowed under article three, chapter forty-six-a of this code.

WV Legislature

§31C-7-4. Applications.

Except as provided for in section six, article seven of this chapter, every application for a loan shall be made in writing upon a form prescribed by the credit union and shall state the purpose of the loan as well as the security or collateral offered, if any. Each loan shall be evidenced by a written document.

WV Legislature

§31C-7-5. Loan limit; collateral requirements; and repayment.

(a) The aggregate of loans to any one member shall be limited to ten percent of the credit union's assets. This limit shall not apply to loans which are fully secured by assignments of shares or deposits in the credit union.

(b) Loans to members which in the aggregate exceed the amount shown in the schedule below shall be secured by such collateral having a value which is at least equal to any amount exceeding the limits in the following schedule, except that all loans exceeding $5,000 not subject to collateral shall be supported by a sworn financial statement:

(1) Five hundred dollars, in credit unions with assets of less than $5,000;

(2) One thousand dollars in credit unions with assets of $5,000 and less than $25,000;

(3) Two thousand dollars in credit unions with assets of $25,000 and less than $100,000;

(4) Five thousand dollars in credit unions with assets of $100,000 and less than $500,000;

(5) Seven thousand dollars in credit unions with assets of $500,000 and less than $1 million; and

(6) Ten thousand dollars in credit unions with assets of $1 million or more: Provided, That the commissioner may, upon request and at his or her discretion, approve in writing a higher unsecured loan limit amount for credit unions having assets of $1 million or more.

(c) A borrower may pay the whole or part of the borrower's loan on any day the credit union is open for business.

WV Legislature

§31C-7-6. Line of credit.

(a) Upon written application by a member, the credit committee or loan officer may approve a line of credit, and loan advances may be granted to the member within the limit of such line of credit. Access to the line of credit may be by use of a lender credit card. Where a line has been approved, no additional credit application is required as long as the aggregate indebtedness does not exceed the approved limit.

(b) Lines of credit shall be subject to periodic review by the credit union, in accordance with the written policies of the credit union's board of directors, and approved or disapproved as to the granting of further loan advances.

WV Legislature

§31C-7-7. Participation loans.

A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations or other organizations pursuant to written policies established by the credit union's board of directors. A credit union which originates such a loan shall retain an interest of at least ten percent of the face amount of the loan.

WV Legislature

§31C-7-8. Other loan programs.

(a) A credit union may participate in any guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

(b) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

(c) A credit union may finance for any person the sale of its personal property, including property obtained as a result of defaults in obligations owed to it, under the terms, conditions and rates provided by this chapter.

WV Legislature

§31C-7-9. Loans to officials.

(a) A credit union may permit officers, directors, and members of its supervisory and credit committees to act as comakers, guarantors or endorsers of loans to other members, subject to the requirements of subsection (b) of this section.

(b) A credit union may make loans to its officers, directors and members of its supervisory and credit committees: Provided, That:

(1) The loan complies with all requirements of this chapter and is not on terms more favorable than those extended to other borrowers; and

(2) The aggregate of loans to or guaranteed by all such officials combined, excepting those secured by shares or deposits, may not exceed twenty percent of the credit union's assets, and shall be shown in aggregate as a separate item in the reports rendered by the credit union and filed with the commissioner pursuant to section seven, article one of this chapter.

(c) No credit union officer, director, or member of its supervisory or credit committee may participate in making a credit approval of a loan in which they have a self-interest. If any member of the credit committee makes an application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration, the supervisory committee shall appoint a substitute to act on the credit committee in place of that member, during the consideration of the application.

WV Legislature

§31C-8-1. Insurance for members.

A credit union may purchase or make available credit life or other credit insurance for its members either on an individual or group basis.

WV Legislature

§31C-8-2. Indemnification of officers.

A credit union may indemnify its officers, directors or employees by purchase of insurance or otherwise, to the extent that such indemnification is permitted to that institution under federal law. Indemnification articles or bylaws must conform to, or be more restrictive than, that set forth in section nine, article one, chapter thirty-one of this code. The commissioner reserves the right to prohibit or limit, by regulation or order, any indemnification payment for reasons of safety and soundness or nonconformity to the credit union's articles of incorporation or bylaws or to the restrictions placed on indemnification contained in this section or other applicable state law.

WV Legislature

§31C-8-3. Group purchasing.

A credit union may enter into marketing arrangements and joint ventures with other credit unions, organizations or financial institutions to facilitate its members' voluntary purchase of goods, insurance and other services from third parties, consistent with the purposes of the credit union. A credit union may be compensated for services so provided.

WV Legislature

§31C-8-4. Money-type instruments.

A credit union may collect, receive and disburse moneys in connection with the providing of negotiable checks, money orders, travelers' checks and other money-type instruments, and the providing of these services through automated teller machines (ATMs) and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

WV Legislature

§31C-8-5. Retirement accounts and trust authority.

A credit union may provide pension savings programs and deferred income accounts, including individual retirement accounts. In order to carry out its authority under this section, a credit union may:

(a) Contract for the provision of trust services to its members with a trust company or other organization with trust powers authorized to do business in this state. For this purpose, the trust company or other organization with trust powers may serve credit union members at credit union facilities on a full-time or part-time basis; and

(b) Act as trustees of member funds permitted by federal law to be deposited in a credit union in the form of share deposits either as a deferred compensation or tax-deferral device, provided the credit union obtains the prior approval to conduct such activity from the board of banking and financial institutions upon hearing and written order.

WV Legislature

§31C-9-1. Investment and deposit of funds.

(a) The credit union's board of directors shall have charge of the investment of funds, except that they may designate an investment committee or investment officer to make investments in its behalf, under written investment policies established by the credit union's board.

(b) The credit union's board of directors shall designate a depository or depositories for the funds of the credit union.

WV Legislature

§31C-9-2. Authorized investments.

Funds not used in loans to members may be invested:

(a) In securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations or other accounts of banking institutions organized under state or federal law;

(d) In loans to or in shares or deposits of other credit unions or corporate credit unions;

(e) In deposits in, loans to, or shares of any federal reserve bank or of any central liquidity facility established under state or federal law;

(f) In shares, stocks, deposits in, loans to or other obligations of any organization, corporation or association providing services associated with the general purposes of the credit union or engaging in activities incidental to the operations of a credit union. Such investments in the aggregate may not exceed two percent of the credit union's equity capital and shares without written permission of the commissioner;

(g) In any investment legal for banking institutions or trust funds chartered in this state;

(h) In participation loans with other credit unions, credit union organizations or other organizations;

(i) In fixed assets, not to exceed five percent of the credit union's equity capital and shares, unless with the prior written approval of the commissioner.

WV Legislature

§31C-9-3. Reserve funds.

(a) At the end of each accounting period the credit union shall determine its gross income and from this amount shall set aside and transfer funds to a regular reserve. The credit union shall transfer to the reserve amounts as required under a schedule set by the national credit union administration (NCUA) or its successor. If no such schedule is set, then the reserve shall be at a rate of ten percent of gross income until such time as the reserve fund reaches five percent of risk assets; then the formula is decreased to seven percent of gross income until such time as the reserve fund reaches six percent of risk assets; and then the formula is decreased to five percent of gross income until the reserve fund attains a maximum of seven percent of risk assets, with subsequent transfers required only to maintain the seven percent maximum. The reserves established under this section shall belong to the credit union and shall be held to meet contingencies or losses in its business.

(b) Special reserves to protect the interest of members may be required by the commissioner by rule, or when found by the credit union's board of directors or by the commissioner, in any special case, to be necessary for that purpose. These may include allowances for loan losses and investment losses.

WV Legislature

§31C-10-1. Voluntary liquidation.

(a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) If it decides to begin the procedure, 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.

(c) Within ten days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the commissioner and the insuring organization in writing, setting forth the reasons for the proposed liquidation. Within ten days after the members act on the question of liquidation, the president shall notify the commissioner and the insuring organization in writing as to the action of the members on the proposal.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of, and making any transfer of share and deposit accounts to loans and interest, making investments of any kind, and granting loans may be restricted or suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(e) 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. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten days prior to such meeting.

(f) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans 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 such debts and obligations until its affairs are fully concluded.

(g) The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in subsection (f), section four, article one of this chapter.

(h) As soon as the board of directors or the 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 such credit union shall be dissolved. The liquidating agent shall return all pertinent books and records of the liquidating credit

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union to the commissioner.

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§31C-10-2. Merger of credit unions.

(a) A credit union organized under this chapter may, with the approval of the commissioner and regardless of common bond, merge with one or more other credit unions organized under this chapter, the laws of another state or territory of the United States or the laws of the United States.

(b) When two or more credit unions merge, they shall either designate one of them as the continuing credit union, or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under article two of this chapter. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(c) Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the commissioner for review and hearing to grant preliminary approval. If the plan includes the creation of a new credit union, all documents required by section one, article two of this chapter shall be submitted as part of the plan. In addition to any other documents or information required by the commissioner, each participating credit union shall submit the following:

(1) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) The vote of the directors in favor of the adoption of the plan; and

(3) A copy of the resolution or other action by which the plan was agreed upon.

(d) The commissioner shall after review and hearing, grant preliminary approval by written order, if: (i) The plan has been approved properly by each board of directors; (ii) the documentation required to form a new credit union, if any, complies with section one, article two of this chapter; (iii) the action would not result or tend to create a monopoly, or substantially lessen competition, or otherwise further a restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the members to be served; and (iv) taking into consideration the financial and managerial resources and further prospects of the credit unions concerned, the action would not be contrary to the best interests of the community whose shares are affected by such action, nor detrimental to the safety and soundness of the credit union to be acquired.

(e) After the commissioner grants preliminary approval, each merging credit union shall, unless waived by the commissioner, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special membership meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the commissioner indicating the vote by which the

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members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(f) The commissioner may waive the membership vote described in subsection (e) of this section for any credit union upon determining that the credit union is insolvent or about to be insolvent.

(g) The commissioner shall grant final approval of the plan of merger after determining that the requirements of subsection (e) of this section in the case of each merging credit union have been met. If the plan of merger includes the creation of a new credit union, the commissioner must approve the organization of the new credit union under section two, article two of this chapter as part of the approval of the plan of consolidation. The commissioner shall notify all participating credit unions of the approval of the plan.

(h) Upon final approval of the plan by the commissioner and the filing of the proper documents with the office of the Secretary of State, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, endorsement, or other instrument of transfer, and all debts, obligations and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(i) If the surviving or new credit union created by the transaction is chartered by another state or territory of the United States, it shall, in addition to the criteria set forth in subsection (c) of this section, be subject to the requirements of section six, article two of this chapter. No merger resulting in an out-of-state credit union acquiring a West Virginia credit union shall be permitted unless that other state or territory permits a West Virginia credit union to merge or acquire credit unions in their state or territory on terms that are, on the whole, substantially no more restrictive than those established under the terms of this section: Provided, That no such merger shall be approved where the West Virginia credit union to be acquired has been in operation for less than two years.

(j) Notwithstanding any other provision of law, the commissioner may, without prior hearing, authorize a merger or consolidation of a credit union which is insolvent or is about to be insolvent 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 which is insolvent or about to be insolvent if the commissioner is satisfied that:

(1) An emergency requiring expeditious action exists with respect to such other credit union;

(2) Other alternatives are not reasonably available; and

(3) The public interest would best be served by approval of such merger, consolidation,

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purchase or assumption.

(k) Notwithstanding any other provision of law, the commissioner may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of, or assume any of the liabilities of, a credit union which is insolvent or about to be insolvent, except that prior to exercising this authority the commissioner should consider attempting to effect a merger or consolidation with, or purchase and assumption by, another credit union as provided in subsection (j) of this section; and

(l) For purposes of the authority contained in subsection (k) of this section, insured share and deposit accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the commissioner and the insuring organization shall be absolved of any liability to the credit union's members with respect to those accounts.

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§31C-10-3. Conversion.

(a) A credit union incorporated under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States by complying with the following requirements:

(1) The proposition for the conversion shall first be approved and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date) by a majority of the directors of the West Virginia state credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than sixty or less than fourteen days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of two thirds of the members voting in person or in writing;

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the commissioner of banking within ten days after the vote is taken; however, no West Virginia state-chartered credit union may convert its charter to that of another state unless: (i) The conversion is approved by the commissioner of banking in writing after notice; (ii) the other state allows conversions of its credit unions to a West Virginia state charter on a reciprocal basis; and (iii) the majority, or in the event the credit union operates offices in more than two states, the plurality, of the credit union's members are residents of that other state. To the extent that an out-of-state credit union created by conversion seeks to conduct business through a branch or service facility in West Virginia, the provisions of section six, article two of this chapter shall apply;

(3) Promptly after the commissioner of banking has approved the conversion in writing, and in no event later than ninety days thereafter, the credit union shall take such action as may be necessary under the applicable federal or state law to make it a federal credit union or credit union of another state and within ten days after receipt of the federal credit union charter or out-of-state credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing, the credit union shall cease to be a West Virginia state-chartered credit union;

(4) The successor federal credit union or out-of-state chartered credit union shall be vested with all the assets and shall continue to be responsible for all of the obligations of the West Virginia state credit union to the same extent as though the conversion had not taken place.

(b) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the laws and rules of this state and file proof of compliance with the commissioner. The commissioner shall generally treat the conversion to a West Virginia state-chartered credit union as a formation of a new credit union pursuant to article two of this chapter and the procedures and requirements therein shall be followed to

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the extent applicable.

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§31C-11-1. Incorporation.

A corporate credit union may be incorporated under this article. All parts of this chapter not inconsistent with this article shall apply to it.

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§31C-11-2. Purposes.

The purposes of the corporate credit union are to:

(a) Accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;

(b) Act as an intermediary for credit union funds between members and other corporate credit unions;

(c) Obtain liquid funds from other credit union organizations, financial intermediaries and other sources;

(d) Foster and promote in cooperation with other state, regional and national corporate credit unions and credit union organizations or associations the economic security, growth and development of member credit unions;

(e) Provide payment systems and correspondent services to its members; and

(f) Perform such other services of benefit to its members which are authorized by the commissioner.

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§31C-11-3. Membership.

(a) Membership in the corporate credit union shall consist of and be limited to the credit union subscribers to the articles of incorporation, credit unions incorporated under this chapter, the Federal Credit Union Act or any other credit union act, organizations or associations of credit unions, and such other organizations provided for in the articles of incorporation or bylaws.

(b) A member of the corporate credit union shall designate one person to be its authorized representative to attend meetings of the corporate credit union and to vote on behalf of the member. A credit union member of the corporate credit union may only designate as its authorized representative a member of its own credit union.

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§31C-11-4. Organization.

(a) Application to form a corporate credit union shall be made in writing to the commissioner. The application shall contain the names of at least ten percent of the credit unions in the proposed field of membership, but in no case less than fifty credit unions that have agreed to subscribe to shares in the corporate credit union at the time the application is made.

(b) The application shall be accompanied by articles of incorporation and bylaws.

(c) The bylaws shall provide for the selection of a board of directors of at least five persons, all of whom shall be authorized representatives of members. The bylaws shall require those applying for membership to subscribe to membership shares or other shares, or both, in a minimum amount as specified in the bylaws.

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§31C-11-5. Powers and privileges.

(a) The corporate credit union shall enjoy the powers and privileges of any other credit union incorporated under this chapter in addition to those powers enumerated in this article, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(b) The corporate credit union may:

(1) Accept funds, either as shares or deposits, from a member and from any credit union incorporated by this state, by another state or territory of the United States or by the United States, whether or not such credit union is a member of the corporate credit union, or from a similar institution incorporated under the laws of another country;

(2) Make loans to or invest in a member or in any credit union incorporated by this state, by another state or territory of the Unites States or by the United States, whether or not such credit union is a member of the corporate credit union;

(3) Make loans to or place deposits in a bank, savings bank, trust company or savings and loan association incorporated by this state, by another state or territory of the United States or by the United States;

(4) Provide payment systems and correspondent services for the benefit of its members;

(5) Participate with any credit union incorporated by this state, another state or territory of the United States or the United States in making loans to its members or to members of any other participating credit union, under the terms and conditions to which the participating credit unions agree;

(6) Purchase, sell, and hold investment securities which are marketable obligations in the form of bonds, notes or debentures which are salable under ordinary circumstances with reasonable promptness at a fair value. All investments and related contracts and agreements shall be made in accordance with written investment policies established by the board of directors, and shall conform to those investments permitted under section two, article nine of this chapter;

(7) Borrow from any source, at the discretion of its board of directors;

(8) Authorize its board of directors to delegate the authority to set interest rates on loans and deposits and to determine dividends on shares;

(9) Contract for penalties for payment of loans prior to their scheduled maturity;

(10) Sell all or a part of its assets to another depository financial institution, purchase all or part of the assets of another depository financial institution and assume the liabilities of the selling depository financial institution and those of its members or depositors. To the extent that the action results in a merger, the commissioner shall direct that the appropriate

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provisions of section two, article ten of this chapter be followed;

(11) Act as intermediary for the funds of members, credit unions and other corporate credit unions;

(12) Act as agent for members, other credit unions and credit union organizations in paying, receiving, transferring the assets and liabilities received and invested as permitted in this article;

(13) Receive and hold in safekeeping the securities and other assets of its members and, in connection therewith, make such disposition of such assets as may be agreed to or directed by the member; and

(14) Exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes.

(c) The corporate credit union may exercise the powers or privileges granted a federal corporate credit union, subject to the approval of the commissioner.

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§31C-11-6. Participation in central system.

The corporate credit union may enter into agreements and subscribe to any required shares for the purpose of participation in the national credit union administration central liquidity facility created by Public Law 95-630 or any other state or federal central liquidity facility or central financial system available to credit unions. It may also enter into agreements with any third parties to aid credit unions to obtain additional sources of liquidity.

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§31C-11-7. Security interest.

The corporate credit union may require and accept security for loans to a member in the form of a pledge, assignment, hypothecation or mortgage of any assets of the member or a guarantor.

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§31C-11-8. Meetings.

The board of directors of the corporate credit union shall meet each month. The board may meet at other times as is necessary. Board meetings may be conducted by means of telephone as provided in the bylaws in a manner consistent with state law.

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§31C-11-9. Fees.

Corporate credit unions shall pay the assessment and fees set for credit unions under this code to defray the costs to the commissioner and board for their supervision, examination and administration. The assessments and operating fees established by the commissioner or Legislature may make allowances for the special purposes and operations of the corporate credit union.

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§31C-11-10. Reserves.

(a) The corporate credit union shall be exempt from the regular reserve requirements of subsection (a), section three, article nine of this chapter but at the end of each accounting period and prior to paying a dividend or interest refund (or, at the option of the credit union, on a monthly basis if dividends or interest refunds are paid more frequently than monthly) sums shall be set aside in a regular reserve in accordance with the following schedule:

(1) When the credit union's regular reserve and undivided earnings are less than two percent of assets at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit union's average daily assets for the transfer period, times the number of days in the transfer period, divided by three hundred sixty-five.

(2) When the regular reserve and undivided earnings are equal to or greater than two percent of assets, but the regular reserve is less than four percent of assets, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period, times the number of days in the transfer period, divided by three hundred sixty-five.

(b) Charges may be made to the regular reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. Other charges to the regular reserve may only be made with the prior approval of the commissioner.

(c) Additional reserves for corporate credit unions may be required by the commissioner when in his or her discretion, circumstances make such additional reserves necessary and prudent for the protection of shareholders and depositors.

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§31C-11-11. Annual audit.

(a) The supervisory committee of the corporate credit union shall cause an annual audit to be made by an independent certified public accountant and shall submit the annual audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the commissioner within thirty days after receipt by the board of directors.

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§31C-11-12. Securities exemption.

The corporate credit union shall be exempt from the securities laws of this state.

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§31C-12-1. Criminal liability.

Any credit union officer, director, employee or agent, who willfully does any of the following shall be deemed guilty of a felony and, may, upon conviction thereof, be fined not more than $10,000 or imprisoned not less than one year nor more than five years, or both:

(a) With intent to deceive, falsifies any books of account, report, statement, record or other document of a credit union whether by alteration, false entry, omission or otherwise;

(b) Signs, issues, publishes or transmits to a government agency any book of account, report, statement, record or other document which that person knows to be false;

(c) By means of deceit, obtains a signature to a writing which is the subject of forgery;

(d) With intent to deceive, destroys any credit union book of account, report, statement, record or other document.

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§31C-12-2. Penalty for false reports.

Whoever maliciously and knowingly spreads false reports about the management or finances of any credit union shall be fined not less than $25, nor more than $200 or be imprisoned for not less than thirty days nor more than one year, or both.

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§31C-12-3. Civil penalties.

Any person who violates this chapter, the rules issued pursuant thereto, or any orders lawfully entered by the commissioner or board of banking and financial institutions may be subject to civil penalties in an action brought by the commissioner or board in an amount not less than $50 nor more than $5,000 for each violation.

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