

10: 2466

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



# ENROLLED

Com. SUB. FOR

HOUSE BILL No. 2466

(By Delegate HUTCHINSON)



Passed MARCH 13, 1987

In Effect NINETY Days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2466**  
(By DELEGATE HUTCHINSON)

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[Passed March 13, 1987; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one, three, four, seven, eight, nine, eleven and twenty-eight, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit unions generally; eliminating the requirement that the annual meeting of credit unions be held between the first day of January and the thirty-first day of March; providing for a misdemeanor offense for the use of the words "credit union" except by corporations formed under this article and establishing a penalty therefor; empowering the commissioner of banking to authorize associations or league of credit unions to use the words "credit union" in its name; permitting credit unions to operate automated teller machines; providing for the membership of the board of directors, credit committee and supervisory committee of a credit union; requiring an annual audit by the supervisory committee; and describing the procedures whereby a credit union may merge with another credit union.

*Be it enacted by the Legislature of West Virginia:*

That sections one, three, four, seven, eight, nine, eleven and twenty-eight, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted to read as follows:

**ARTICLE 10. CREDIT UNIONS.**

**§31-10-1. Definition and purpose; who may form; incorporation agreement; bylaws; charter approval; issuance and recordation; certificate of authority; form of incorporation and bylaws prescribed by commissioner of banking.**

1 A credit union is hereby defined as a cooperative,  
2 nonprofit association, incorporated in accordance with  
3 the provisions of this article for the purpose of creating  
4 a source of credit at a fair and reasonable rate of  
5 interest, of encouraging habits of thrift among its  
6 members and of providing the opportunity for people to  
7 use and control their money for their mutual benefit.

8 Any eight persons, residents of the state of West  
9 Virginia and having a common bond of occupation or  
10 association, may apply to the secretary of state for  
11 permission to organize a credit union. A credit union  
12 shall be organized in the following manner:

13 (a) The applicants shall execute in duplicate an  
14 incorporation agreement by the terms of which they  
15 agree to be bound. The agreement shall state:

16 (1) The name of the proposed credit union which shall  
17 include the words "credit union" and which shall not be  
18 the same as that of any other existing credit union;

19 (2) The post-office address of its principal office or  
20 place of business;

21 (3) The names and post-office addresses of the incor-  
22 porators, and the number of shares subscribed by each;

23 (4) The total number of shares of stock which the  
24 credit union shall have authority to issue and the par  
25 value of each share, which par value shall not exceed  
26 ten dollars.

27 (b) The applicants shall then prepare and adopt  
28 bylaws for the general government of the credit union  
29 consistent with the provisions of this article and execute  
30 the same in duplicate. The bylaws shall specify:

31 (1) The date of the annual meeting, which shall be  
32 prior to the first day of April of each calendar year,  
33 requirements as to notice and manner of conducting  
34 such meeting;

35 (2) The number of directors, which shall be not less  
36 than five, all of whom must be shareholders and  
37 members of the credit union, their powers and duties;  
38 and the compensation and duties of all officers;

39 (3) The conditions and qualifications for membership;

40 (4) The number of members of the credit committee  
41 and of the supervisory committee, with their respective  
42 powers and duties;

43 (5) The conditions upon which shares may be issued,  
44 transferred and withdrawn;

45 (6) The charges, if any, to be made for failure to meet  
46 obligations punctually;

47 (7) The conditions upon which deposits may be  
48 received and withdrawn, and whether the credit union  
49 shall have the power to borrow;

50 (8) The manner in which the funds of the credit union  
51 shall be invested;

52 (9) The conditions upon which loans may be made and  
53 repaid;

54 (10) The method of receipting for money paid in on  
55 account of shares, deposits and loans;

56 (11) The manner in which the reserve fund shall be  
57 accumulated;

58 (12) The manner in which dividends shall be deter-  
59 mined and paid out.

60 (c) The agreement and bylaws, both executed in  
61 duplicate, shall be forwarded to the secretary of state.

62 (d) The secretary of state, within thirty days after the  
63 receipt of such agreement, shall determine whether it  
64 conforms to the provisions of this article, and whether  
65 or not the organization of the credit union in question  
66 would benefit the organizers of it, and be consistent with

67 the purposes of this article.

68 (e) Thereupon the secretary of state shall notify the  
69 applicants of his decision. If it is favorable, he shall issue  
70 a charter, attach the charter to the duplicate of the  
71 agreement and return the same, together with the  
72 duplicate of the bylaws to the applicants: *Provided*, That  
73 the secretary of state shall issue no charter to any credit  
74 union to do business in this state until such incorpora-  
75 tion agreement and bylaws have been approved in  
76 writing by the commissioner of banking.

77 (f) The applicants shall thereupon file such charter in  
78 the office of the clerk of the county commission of the  
79 county in which the principal office of the credit union  
80 is to be located, and such clerk shall record such  
81 charters, the usual fees to be charged for such  
82 recordation.

83 (g) When any credit union authorized by this article  
84 desires to begin business, it must notify the commis-  
85 sioner of banking, who shall at his earliest convenience  
86 make an examination of its affairs. Having satisfied  
87 himself that all the conditions precedent have in good  
88 faith been complied with, said commissioner shall then  
89 issue to such credit union, under his hand, and official  
90 seal, a certificate of authority reciting that such  
91 examination has been made and that the credit union  
92 is authorized to commence business which certificate  
93 shall be displayed in the business place of such credit  
94 union. But the commissioner may withhold from any  
95 credit union his certificate authorizing the commence-  
96 ment of business whenever he has reason to suppose that  
97 the members have formed the same for any other than  
98 the legitimate objects contemplated in this article.

99 In order to simplify the organization of credit unions,  
100 the commissioner of banking shall cause to be prepared  
101 an approved form of incorporation agreement and form  
102 of bylaws consistent with this article, which may be used  
103 by credit union incorporators.

**§31-10-3. Penalty for unlawful use of words "credit union"; enjoining unlawful use.**

1 The use by any person, copartnership, association or  
2 corporation, except corporations formed under the  
3 provisions of this article, of any name or title which  
4 contains the words "credit union," shall be a misdemea-  
5 nor, punishable by a fine of not less than ten nor more  
6 than one hundred dollars for each day of the illegal use  
7 of such name, and such use may be enjoined by any  
8 court having equity jurisdiction over the party or  
9 parties. However, the commissioner of banking may  
10 authorize associations of credit unions or leagues of  
11 credit unions within the state whose members are credit  
12 unions to use a name or title which contains the words  
13 "credit union."

#### §31-10-4. Powers.

- 1 A credit union shall have the following powers:
- 2 (a) To receive the savings of its members either as  
3 payment on shares, or as deposits (including the right  
4 to conduct Christmas clubs, vacation clubs and other  
5 such thrift organizations within the membership);
- 6 (b) To make loans to members for provident or  
7 productive purposes;
- 8 (c) To make loans to cooperative society or other  
9 organization having membership in the credit union;
- 10 (d) To deposit funds in state and national banks;
- 11 (e) To invest in any investment legal for savings  
12 banks;
- 13 (f) To borrow money as hereinafter indicated;
- 14 (g) To permit the owner of a share or deposit to make  
15 withdrawals by negotiable or transferable instruments  
16 or other orders for the purpose of making transfers to  
17 third parties if such share or deposit is one in which the  
18 entire beneficial interest is held by one or more  
19 individuals or members or by an organization which is  
20 operated primarily for religious, philanthropic,  
21 charitable, educational or other similar purposes and  
22 which is not operated for profit or if such deposit or  
23 account consists of public funds deposited by an officer,  
24 employee or agent of the United States, any state,

25 county, municipality or political subdivision thereof.

26 (h) To maintain automated teller machines at its  
27 principal location and at locations other than its  
28 principal office, upon the approval of the state banking  
29 commissioner and a majority vote of the members voting  
30 on such question. A credit union may join with one or  
31 more other credit unions or financial institutions in the  
32 operation of automated teller machines, upon the  
33 approval of the state banking commissioner and a  
34 majority vote in each credit union of the members voting  
35 on such question. The provisions of section seven of this  
36 article notwithstanding, members voting under the  
37 provisions of this subsection may cast their vote in  
38 person or by proxy.

**§31-10-7. Fiscal year; annual and special meetings;  
voting; proxies.**

1 The fiscal year of every such corporation shall end at  
2 the close of business on the thirty-first day of December.  
3 The annual meeting of the corporation shall be held on  
4 such date as may be provided in the bylaws. Special  
5 meetings may be held by order of the directors or of the  
6 supervisory committee, and shall be held upon request,  
7 in writing, of ten percent of the members. Notice of all  
8 meetings of the corporation shall be given in the manner  
9 prescribed in the bylaws. At all meetings of members,  
10 a member shall have but one vote, irrespective of the  
11 number of shares held. No shareholder may vote by  
12 proxy, but a society, association, copartnership or  
13 corporation, having membership in a credit union, may  
14 be represented by one person authorized by such society,  
15 association, copartnership or corporation to so represent  
16 it. At any meeting the members may decide upon any  
17 question of interest to the corporation, and overrule the  
18 board of directors; and, by a three-fourths vote of those  
19 present and represented, may amend the bylaws, if the  
20 notice of the meeting shall have specified the question  
21 to be considered.

**§31-10-8. Election of directors and committees; oaths of  
office.**

1 At the annual meeting the members shall elect a

2 board of directors of not less than five members, and a  
3 supervisory committee of not less than three members.  
4 The board of directors shall appoint a credit committee  
5 consisting of an odd number, but not less than three  
6 members, or in lieu of a credit committee, one or more  
7 loan officers. However, in the discretion of the members,  
8 the board of directors as such may also be the credit  
9 committee. One member of the board of directors who  
10 is not serving as president or treasurer of the credit  
11 union may also serve on the supervisory committee. All  
12 members of committees and all directors, as well as all  
13 officers whom they may elect, shall make oath as  
14 hereinafter provided, and shall hold their several offices  
15 for such terms as may be determined by the bylaws.

16 The oath required of each director, officer and  
17 member of a committee shall be the oath of the  
18 individual making the same, that he will, as far as the  
19 duty devolves upon him, diligently and honestly admin-  
20 ister the affairs of such corporation, and will not  
21 knowingly violate, or willingly permit to be violated, any  
22 of the provisions of law applicable to such corporation,  
23 and that he is the owner in good faith and in his own  
24 right on the books of the corporation of at least one share  
25 therein. Such oath shall be subscribed by the individual  
26 making it, and certified by the officer before whom it  
27 is taken, and shall immediately be transmitted to the  
28 commissioner of banking and filed and preserved in his  
29 office.

**§31-10-9. Election of officers; powers and duties of board  
of directors; directors and committeemen not  
to receive compensation.**

1 At their first meeting, and at the first meeting in each  
2 fiscal year, the board of directors shall elect from their  
3 number a president, vice president, a secretary and a  
4 treasurer. The office of secretary and treasurer may, if  
5 the bylaws so provide, be held by one person; and other  
6 officers may be elected in the discretion of the directors.  
7 The board of directors shall have the general manage-  
8 ment of the affairs, funds and records of the corporation,  
9 and shall meet as often as may be necessary. Unless the  
10 bylaws specifically reserve all or any of these duties to

11 the members, it shall be the special duty of the directors:  
12 (a) To act upon all applications for membership and the  
13 expulsion of members; (b) to fix the amount of the bond  
14 which shall be required of each officer having the  
15 custody of funds, which bond shall be signed as surety  
16 by some indemnity company duly licensed to transact  
17 business in West Virginia, the amount thereof to be  
18 approved by the commissioner of banking; (c) to  
19 determine from time to time the rate of interest which  
20 shall be allowed on deposits and charged on loans; (d)  
21 to fix the maximum number of shares which may be  
22 held by, and the maximum amount which may be loaned  
23 to, any one member; (e) to declare dividends; (f) to  
24 recommend amendments to the bylaws; (g) to appoint  
25 persons to fill vacancies in the board of directors or in  
26 the credit committee until the election and qualification  
27 of their successors; (h) to have charge of the investment  
28 of the funds of the corporation; (i) to perform such other  
29 duties as the members from time to time authorize.

30 No member of the board of directors or of the credit  
31 or supervisory committee shall receive any compensa-  
32 tion for his services as a member of such board or  
33 committees.

34 The rates, terms and conditions of any loan or line of  
35 credit made to an official, or on which an official is an  
36 endorser or guarantor, shall not be more favorable than  
37 the rates, terms or conditions for comparable loans or  
38 lines of credit extended to any other credit union  
39 member.

**§31-10-11. Powers and duties of supervisory committee.**

1 The supervisory committee shall inspect the securi-  
2 ties, cash and accounts of the corporation and supervise  
3 the acts of the board of directors, credit committee and  
4 officers. At any time the supervisory committee, by a  
5 unanimous vote, may suspend the credit committee or  
6 any member thereof, or any member or members of the  
7 board of directors, or any officer or officers elected by  
8 the board, and by a majority vote they may call a  
9 meeting of the shareholders to consider any violation of  
10 this article or of the bylaws, or any practice of the

11 corporation which, in the opinion of such committee, is  
12 unsafe and unauthorized. Within seven days after the  
13 suspension of the credit committee, or any member  
14 thereof or of any director or officer, the supervisory  
15 committee shall cause notice to be given of a special  
16 meeting of the members to take action relative to such  
17 suspension. The supervisory committee shall fill vacan-  
18 cies in their own number until the next meeting of the  
19 members.

20 Annually, the supervisory committee shall make or  
21 cause to be made a thorough audit of the receipts,  
22 disbursements, income, assets and liabilities of the  
23 corporation for such fiscal year, and shall make a full  
24 report thereon to the directors. Such report shall be read  
25 at the annual meeting of the members and shall be filed  
26 and preserved with the records of the corporation.

**§31-10-28. Merger.**

1 Any credit union may, with the approval of the  
2 commissioner of banking, merge with another credit  
3 union, under the existing charter of the other credit  
4 union, pursuant to any plan agreed upon by a majority  
5 of each board of directors of each credit union joining  
6 in the merger, approved by the affirmative vote of a  
7 majority of the members of each merging credit union  
8 voting at a meeting duly called for such purpose, and  
9 consented to by any governmental agency or other  
10 organization insuring the accounts of the merging credit  
11 unions. The provisions of section seven of this article  
12 notwithstanding, a member of a credit union voting on  
13 the question of merger under the provisions of this  
14 section may cast such vote in person or by proxy. After  
15 such agreement by the directors and approval by the  
16 members of each credit union the president and  
17 secretary of each credit union shall execute, in dupli-  
18 cate, a certificate of merger, which shall set forth all of  
19 the following:

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

22 (b) The vote in favor of adoption of the plan;

23 (c) A copy of the resolution or other action by which  
24 the plan was agreed upon;

25 (d) The time and place of the meeting of the members  
26 at which the plan agreed upon was approved;

27 (e) The vote by which the plan was approved by the  
28 members;

29 Such certificates, in duplicate, and a copy of the plan  
30 of merger agreed upon shall be forwarded to the  
31 commissioner of banking for a review. If approved, a  
32 copy of the certificate certified by him shall be returned  
33 to the merging credit unions within thirty days.

34 If a credit union seeking merger is insolvent or in  
35 danger of insolvency, the commissioner may approve a  
36 merger without the consent of the membership if a  
37 majority of the board of directors of each credit union  
38 approves a request for a merger.

39 Upon any such merger so effected, all property,  
40 property rights, and interest of the merged credit union  
41 shall vest in the surviving credit union without deed,  
42 endorsement or other instrument of transfer, and all  
43 debts, obligations and liabilities of the merged credit  
44 union shall be deemed to have been assumed by the  
45 surviving credit union under whose charter the merger  
46 was effected.

47 This section shall be construed, whenever possible, to  
48 permit a credit union chartered under any other act to  
49 merge with one chartered under this article, or to  
50 permit one chartered under this article to merge with  
51 one chartered under any other act.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce O. Allison*  
-----  
Chairman Senate Committee

*Lyle Settle*  
-----  
Chairman House Committee  
Member

Originating in the House.

Takes effect ninety days from passage.

*Jodd C. Willis*  
-----  
Clerk of the Senate

*Donald J. Hogg*  
-----  
Clerk of the House of Delegates

*Sanford*  
-----  
President of the Senate

*Wolf*  
-----  
Speaker of the House of Delegates

The within *appeared* this the *30th*  
*March* day of \_\_\_\_\_, 1987.

*Arch A. Moore Jr.*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/87

Time 4:49 p.m.

RECEIVED

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