

HB 4527

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

RECEIVED
LEGISLATIVE SERVICES
MARCH 11 1996

HOUSE BILL No. 4527

(By Delegates Farris, Sacrist, Cann,
Douglas, Fantasia, Faircloth and
Greer)

Passed March 8, 1996

In Effect July 1, 1996 ~~Passage~~



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H. B. 4527

(By Delegates Farris, Seacrist, Cann, Douglas,
Fantasia, Faircloth and Greear)

[Passed March 8, 1996; in effect July 1, 1996.]

AN ACT to repeal article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty one, as amended; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-b, all relating generally to providing for the organization, operation, and supervision of cooperative, nonprofit thrift and credit associations to be known as credit unions; and to define their powers.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-b, all to read as follows:

CHAPTER 31B. CREDIT UNIONS.

ARTICLE 1. SUPERVISION AND REGULATION.

§31B-1-1. Definitions.

1 In construing this chapter, the following definitions
2 shall apply unless such application would produce a result
3 clearly inconsistent with the context of the statutory provi-
4 sion.

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

9 (b) "Commissioner" means the West Virginia com-
10 missioner of banking.

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

14 (d) "Credit union" means a cooperative, nonprofit
15 corporation, incorporated under this chapter, for the pur-
16 poses of encouraging thrift among its members, creating a
17 source of credit at fair and reasonable rates of interest, and
18 providing an opportunity for its members to use and con-
19 trol their own money on a democratic basis in order to
20 improve their economic and social condition.

21 (e) "Deposit account" means a balance held by a
22 credit union and established by a member, another credit
23 union or a governmental unit in accordance with standards
24 specified by the credit union including balances designat-
25 ed as deposits, deposit certificates, checking accounts or
26 other names. Ownership of a deposit account does not
27 confer membership or voting rights and does not repre-
28 sent an interest in the equity capital of the credit union
29 upon dissolution or conversion to another type of institu-
30 tion. A deposit account is a debt owed by the credit union
31 to the account holder.

32 (f) "Equity capital" means reserves, loan loss and
33 investment loss allowance accounts, and undivided earn-
34 ings.

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

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

42 (i) "Immediate family" means one's wife or husband,
43 and children, brothers, sisters or parents of the member or
44 their spouse. The term "children" also includes stepchil-
45 dren, foster children and adopted children.

46 (j) "Insolvent" means the condition that results when

47 the institution is unable to pay its debts to its depositors,
48 members and other creditors in the ordinary and usual
49 course of business or when it is in a state of balance sheet
50 insolvency such that its assets are less than its liabilities,
51 exclusive of equity capital. The term "about to be insol-
52 vent" means the institution would be unable to meet the
53 demands of its depositors or members, or to make ade-
54 quate provision for their timely payment if it were imme-
55 diately closed for the purpose of liquidation.

56 (k) "Insuring organization" means an organization
57 that provides aid and financial assistance to credit unions
58 that are in the process of liquidation or are incurring fi-
59 nancial difficulty in order that the share and deposit ac-
60 counts in the credit unions shall be protected or guaran-
61 teed against loss either without limit or up to a specified
62 level for each account.

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

69 (m) "Organization" means any corporation, associa-
70 tion, partnership, society, firm, syndicate, trust or other
71 legal entity.

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

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

77 (p) "Risk assets" means all assets other than cash on
78 hand, deposits and/or shares in federally or state-insured
79 banks, savings and loan associations, and credit unions that
80 have a remaining maturity of five years or less, or which
81 otherwise qualify as a risk assets as set forth in 12 CFR
82 700.1(i) and shall include membership shares in corporate
83 credit unions.

84 (q) "Share account" or "shares" means a balance held

85 by a credit union and established by a member in accor-
86 dance with standards specified by the credit union includ-
87 ing balances designated as shares, share certificates, share
88 draft accounts or other names. However, it does not in-
89 clude membership shares issued by a corporate credit
90 union. Ownership of a share account confers membership
91 and voting rights and represents an interest in the equity
92 capital of the credit union upon dissolution or conversion
93 to another type of institution.

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

1 The commissioner of the department of banking
2 shall be responsible for the supervision and regulation of
3 credit unions incorporated under this chapter or previous-
4 ly incorporated under this code. The commissioner is
5 specifically charged with administering the supervisory
6 and regulatory responsibilities set forth in this chapter, in
7 conjunction with the board of banking and financial insti-
8 tutions as set forth in section two, article three, chapter
9 thirty-one-a of this code.

§31B-1-3. Powers of commissioner.

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

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

11 (c) The commissioner may issue cease and desist
12 orders pursuant to section four, article two, chapter
13 thirty-one-a of this code if a credit union is engaged or
14 has engaged, or when the commissioner has reasonable
15 cause to believe the credit union is about to engage, in an
16 unsafe or unsound practice, or is violating or has violated
17 or the commissioner has reasonable cause to believe is
18 about to violate a material provision of any law, rule or

19 any condition imposed in writing by the commissioner or
20 any written agreement made with the commissioner.

21 (d) The commissioner may suspend from office and
22 prohibit from further participation in any manner in the
23 conduct of the affairs of a credit union any director, offi-
24 cer or committee member who has committed any viola-
25 tion of a law, rule or of a cease and desist order or who has
26 engaged or participated in any unsafe or unsound practice
27 in connection with the credit union or who has committed
28 or engaged in any act, omission or practice which consti-
29 tutes a breach of that person's fiduciary duty as such di-
30 rector, officer or committee member, when the commis-
31 sioner has determined that such action or actions have
32 resulted or will result in substantial financial loss or other
33 damage that seriously prejudices the interests of the mem-
34 bers.

35 (e) The commissioner shall have the power to sub-
36 poena witnesses, compel their attendance, require the pro-
37 duction of evidence, administer oaths and examine any
38 person under oath in connection with any subject relating
39 to a duty imposed upon or a power vested in the commis-
40 sioner.

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

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

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

1 (a) If it appears that any credit union is bankrupt,
2 insolvent, about to be insolvent or that it has willfully vio-
3 lated this chapter, or is operating in an unsafe or unsound
4 manner, the commissioner may, without prior hearing,
5 issue an order temporarily suspending the credit union's

6 operations. The credit union's board of directors shall be
7 given notice by registered mail of such suspension, which
8 notice shall include a list of the reasons for such suspen-
9 sion, and a list of the specific violations of this chapter, if
10 any. The commissioner shall also notify the insuring
11 organization and the board of banking and financial insti-
12 tutions of any suspension.

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

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

31 (d) If the commissioner, after issuing notice of sus-
32 pension and providing an opportunity for a hearing, re-
33 jects the credit union's plan to continue operations, or if
34 the commissioner after accepting or directing a plan for
35 continued operations finds that the credit union has failed
36 to comply with the plan's substantive corrective provisions,
37 then the commissioner may issue a notice of involuntary
38 liquidation and appoint a liquidating agent. The credit
39 union shall be given at least sixty days in which to take
40 corrective action upon acceptance or issuance of any cor-
41 rective plan by the commissioner. The credit union may
42 request the appropriate court to stay execution of an in-
43 voluntary liquidation sought under this subsection. How-
44 ever, nothing in this section prevents the commissioner
45 from appointing a conservator pursuant to section three,

46 article seven, chapter thirty-one-a of this code, including a
47 temporary appointment of a conservator pending the
48 correction of the conditions causing the suspension, or
49 appointing a receiver and seeking to liquidate the credit
50 union pursuant to section four, article seven, chapter
51 thirty-one-a of this code when necessary in order to pro-
52 tect the interest of the credit union's members and deposi-
53 tors.

54 (e) If, within the suspension period, the credit union
55 fails to answer the suspension notice or request a hearing,
56 the commissioner may then revoke the credit union's char-
57 ter, appoint a liquidating agent and liquidate the credit
58 union.

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

62 (1) Secured creditors up to the value of their collater-
63 al;

64 (2) Costs and expenses of liquidation;

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

66 (4) Costs and expenses incurred by creditors in suc-
67 cessfully opposing the release of the credit union from
68 certain debts as allowed by the commissioner;

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

71 (6) Debts owed to the United States;

72 (7) General creditors, secured creditors to the extent
73 their claims exceed the value of their collateral and owners
74 of deposit accounts to the extent such accounts are unin-
75 sured;

76 (8) Members, to the extent of uninsured share ac-
77 counts and the organization that insured the accounts of
78 the credit union; and

79 (9) Members of a corporate credit union, to the ex-
80 tent of membership shares.

81 As soon as the appointed liquidating agent deter-

82 mines that all assets from which there is a reasonable ex-
83 pectancy of realization have been liquidated and distribut-
84 ed as set forth in this section, a certificate of dissolution
85 shall be executed on a form prescribed by the commis-
86 sioner and filed with the secretary of state, which shall
87 after filing and indexing same, be forwarded to the com-
88 missioner, whereupon the credit union shall be dissolved.
89 The liquidating agent shall return all pertinent books and
90 records of the liquidating credit union to the commission-
91 er.

§31B-1-5. Examinations.

1 (a) The commissioner shall annually examine or
2 cause to be examined each credit union. A credit union
3 and any of its officers and agents shall be required to give
4 the commissioner or the commissioner's representatives
5 full access to all books, papers, securities, records and
6 other sources of information under their control.

7 (b) A report of such examination shall be forwarded
8 to the credit union's board of directors within thirty days
9 after completion. Said report shall contain comments
10 relative to the management of the affairs of the credit
11 union and the general condition of its assets. Within thirty
12 days after the receipt of such report, the directors and
13 committee members shall meet to consider matters con-
14 tained in the report. Every official communication from
15 the commissioner to any such institution, or to any officer
16 thereof, relating to an examination or an investigation of
17 the affairs of such institution conducted by the commis-
18 sioner or containing suggestions or recommendations as
19 to the manner of conducting the business of the institu-
20 tion, shall be read to the board of directors at the next
21 meeting after the receipt thereof, and the president, or
22 other executive officer, of the institution shall within four-
23 teen days of such meeting notify the commissioner in
24 writing of the presentation and reading of the communica-
25 tion and of any action taken thereon by the institution.

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

§31B-1-6. Records.

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

10 (b) A credit union is not liable for destroying re-
11 cords after the expiration of the record retention time
12 prescribed by subsection (a) of this section, except for any
13 records involved in an official investigation or examina-
14 tion about which the credit union has received notice.

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

§31B-1-7. Reports.

1 (a) Credit unions shall report to the commissioner
2 semi-annually during January and July of each calendar
3 year on a date set by the commissioner for the business
4 periods ending the thirtieth day of June and the thirty-first
5 day of December respectively on forms supplied by the
6 commissioner for that purpose. Additional reports may
7 also be required.

8 (b) A charge of one hundred dollars shall be levied
9 for each day a credit union fails to provide a required
10 report, unless it is excused for cause by the commissioner
11 or courts.

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

14 (d) In addition to other reports that may be required
15 under this chapter, every credit union with a main office
16 or branch located in this state shall file with the commis-
17 sioner an annual report specifying for its main office and

18 each branch (excluding automated teller machines) in this
19 state:

20 (i) The location of each such office, including coun-
21 ty and, where applicable, municipality;

22 (ii) The amount of deposits and shares held by each
23 such office as of the end of the preceding calendar year;
24 and

25 (iii) The amount of loans outstanding by each such
26 office at the end of the preceding calendar year.

27 The foregoing report shall be based upon the credit
28 union's allocation of its deposit and share base and loan
29 portfolio among its offices. The report shall be filed with
30 the commissioner on or before the fifteenth day of Febru-
31 ary of each year on forms prescribed by the commission-
32 er.

§31B-1-8. Assessments.

1 The commissioner of banking shall charge and
2 collect from each credit union and pay into a special reve-
3 nue account in the state treasury for the department of
4 banking an annual assessment payable on the first day of
5 July computed upon the total assets of the credit union
6 shown on the report of condition of the credit union as of
7 the last business day in December of the previous year as
8 is set out in section eight, article two, chapter thirty-one-a
9 of this code.

ARTICLE 2. FORMATION OF CREDIT UNION.

§31B-2-1. Organization procedure.

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

6 (b) The incorporators shall prepare, adopt and exe-
7 cute in duplicate articles of incorporation and agree to the
8 terms thereof. The articles shall state:

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

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

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

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

18 (c) The incorporators shall prepare, adopt and exe-
19 cute in duplicate bylaws consistent with this chapter for the
20 general government of the credit union. The bylaws shall
21 state:

22 (1) The conditions and qualifications of member-
23 ship;

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

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

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

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

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

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

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

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

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

46 (d) The incorporators shall select at least five per-
47 sons who are eligible for membership and who agree to
48 become members and serve on the board of directors, and
49 at least three other persons who are eligible for member-
50 ship and who agree to become members and serve on the
51 supervisory committee. The persons selected to serve on
52 the board of directors and supervisory committee shall
53 execute an agreement to serve in these capacities until the
54 first annual meeting or until the election of their respective
55 successors, whichever is later.

56 (e) The incorporators shall provide to the commis-
57 sioner an affidavit of the expenses incurred or anticipated
58 in the organization of the credit union.

59 (f) In their application to obtain a certificate of char-
60 ter the incorporators shall forward to the commissioner the
61 duplicate articles of incorporation and bylaws and the
62 agreements to serve. The submission of these documents
63 shall be accompanied by an investigation fee of one hun-
64 dred dollars payable to the commissioner.

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

1 (a) The commissioner shall review the incorporation
2 agreement and bylaws together with other information
3 submitted as the commissioner may prescribe and com-
4 plete the examination and investigation on an applica-
5 tion to charter a credit union within ninety days, unless a writ-
6 ten request for additional information or disclosures are
7 made by the commissioner, in which event, the period of
8 ninety days shall be extended an additional thirty days.
9 Upon public hearing and obtaining written approval by
10 order of the commissioner, the agreement and bylaws,
11 both executed in duplicate, together with a certified copy
12 of the order and applicable corporation chartering fees
13 shall be forwarded to the secretary of state for processing
14 as in the case of any other corporate charter application.
15 A certificate of charter shall be approved by the commis-
16 sioner if the articles and bylaws are in conformity with this
17 chapter and the commissioner is satisfied that:

18 (1) The characteristics of the common bond set
19 forth in the proposed bylaws are favorable to the econom-
20 ic viability of the proposed credit union;

- 21 (2) The proposed capital structure is adequate;
- 22 (3) Provision has been made for suitable quarters
23 from which to conduct the business of a credit union; and
- 24 (4) The reputation, character and abilities of the
25 initial board of directors and supervisory committee pro-
26 vide assurance that the credit union's affairs will be prop-
27 erly administered.
- 28 (b) The secretary of state shall upon receipt of any
29 applicable fees, file and record the incorporation charter,
30 and return a copy of the bylaws and one of the duplicate
31 originals of the articles of incorporation to the incorpora-
32 tors or their representatives. The original articles and by-
33 laws shall be preserved in the permanent files of the credit
34 union.
- 35 (c) Any order to grant or deny a certificate of char-
36 ter shall be accompanied by findings of fact and conclu-
37 sions of law upon which the decision was based. If a cer-
38 tificate of charter is denied by the commissioner, he or she
39 shall notify the incorporators and provide a copy of the
40 order, which shall set forth reasons for the denial. The
41 commissioner's decision may be appealed to the board of
42 banking and financial institutions within thirty days, and if
43 no appeal is made of an order to deny the application, the
44 agreement of incorporation, the corporation chartering
45 fees, and any other papers filed therewith shall be prompt-
46 ly returned to the attorney, agent or other responsible
47 person representing the incorporators in the application.
- 48 (d) Upon receipt of a certificate of charter, the in-
49 corporators of the credit union shall promptly apply to the
50 commissioner for a certificate of authority to engage in
51 business and comply with the provisions of section five,
52 article two, chapter thirty-one-a of this code, in advance to
53 the issuance of the credit union's certificate of authority.
54 The incorporators shall likewise comply with other provi-
55 sions of this chapter relating to completion of its corporate
56 organization, and the corporation's readiness to com-
57 mence business as a credit union.
- 58 (e) Upon the credit union's application, and the
59 examination, approval and receipt of a certificate of au-

60 thorty from the commissioner, a credit union may com-
61 mence to engage in business. The procedure and criteria
62 for the certificate of authority licensure shall be those set
63 forth in section five, article two, chapter thirty-one-a of
64 this code for nonbank financial institutions.

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

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

§31B-2-3. Articles and bylaws.

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

8 (b) The articles of incorporation and the bylaws may
9 be amended as provided in the articles and bylaws, respec-
10 tively. Amendments to the articles of incorporation or
11 bylaws shall be submitted to the commissioner who shall
12 approve or disapprove the proposed amendments within
13 sixty days.

14 (c) Amendments shall become effective upon ap-
15 proval in writing by the commissioner. If the commis-
16 sioner disapproves any proposed amendment, the credit
17 union may appeal the decision to the board within thirty
18 days.

§31B-2-4. Use of name exclusive.

1 (a) The name of every credit union organized under
2 this chapter shall include the phrase "credit union." No
3 credit union may adopt a name either identical to the
4 name of any other credit union doing business in this state
5 or so similar to the name of any other credit union doing
6 business in this state as to be misleading or to cause confu-
7 sion.

8 (b) No person, other than a credit union incorporat-
9 ed under this chapter, the Federal Credit Union Act or a
10 credit union authorized to do business in this state under
11 section six, article two of this chapter, an association of
12 credit unions, or an organization, corporation or associa-
13 tion whose membership or ownership is primarily limited
14 to credit unions or credit union organizations, may use a
15 name or title containing the phrase "credit union" or any
16 derivation thereof, represent itself as a credit union, or
17 conduct business as a credit union.

18 (c) Violation of this section constitutes a misde-
19 meanor punishable by a fine of not more than one hun-
20 dred dollars for each day of illegal use of such name, by
21 imprisonment for not more than one year, or both.

22 (d) The commissioner may petition a court of com-
23 petent jurisdiction to enjoin a violation of this section.

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

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

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

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

19 (d) To the extent that a credit union provides its
20 members access to their accounts through a remote service
21 unit, such as an ATM or point-of-sale (POS) device, the

22 credit union shall be governed by the same rules of the
23 commissioner pertaining to banks operating through cus-
24 tomer bank communication terminals (CBCTs).

§31B-2-6. Out-of-state credit unions.

1 (a) A credit union organized under the laws of an
2 other state or territory of the United States may conduct
3 business as a credit union through a branch or service
4 facility in this state with the approval by written order of
5 the commissioner, provided credit unions incorporated
6 under this chapter are allowed to do business in the other
7 state under conditions similar to these provisions. Unless
8 the context clearly requires otherwise, the term "territory
9 of the United States" shall, as used in this chapter, include
10 the District of Columbia. Before granting the approval,
11 the commissioner must, upon public hearing, find that the
12 applicant out-of-state credit union:

13 (1) Is a credit union organized and operating under
14 standards recognized as appropriate pursuant to the provi-
15 sions of this chapter;

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

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

20 (4) Has a board of directors and supervisory com-
21 mittee with the reputation, character and abilities to pro-
22 vide assurance that the credit union's affairs will be prop-
23 erly administered;

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

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

30 (7) Needs to conduct business in this state to ade-
31 quately serve its members in this state.

32 (b) No out-of-state credit union may conduct busi-
33 ness in this state unless it:

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

37 (2) Complies with the consumer protection statutes
38 and rules applicable to credit unions incorporated under
39 this chapter;

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

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

47 (c) The commissioner may revoke the approval of a
48 credit union to conduct business in this state if the com-
49 missioner finds that:

50 (1) The credit union no longer meets the require-
51 ments of subsection (a) of this section;

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

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

56 (4) Continued operation by the credit union is likely
57 to have a substantially adverse impact on the financial,
58 economic or other interests of residents of this state.

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

1 A credit union incorporated under this chapter may
2 conduct business outside of this state in other states or
3 territories where it is permitted to conduct business as a
4 credit union. The activities and records of such credit
5 union business conducted outside this state remain fully
6 under the jurisdiction and supervision of the commission-
7 er. Prior to the establishment of any branch or service
8 facility outside this state, a credit union shall provide no-
9 tice to, and obtain written approval of, the commissioner.
10 The creation of such facilities must be approved by a
11 majority vote of the credit union's board of directors.

§31B-2-8. Tax exemption.

1 (a) Any credit union organized under this or any
2 other credit union act and all shares and deposits therein
3 shall be exempt from all taxation now or hereafter im-
4 posed by this state or any taxing authority within this state.
5 No law which taxes corporations in any form, or the shares
6 or deposits thereof, or the accumulation thereon, shall
7 apply to any such credit union; except that any real prop-
8 erty and any tangible personal property owned by any
9 such credit union shall be subject to taxation to the same
10 extent as other similar property is taxed: *Provided*, That
11 this exception shall not permit the imposition of any sales
12 or use taxes on the credit union.

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

16 (c) The participation by a credit union in any gov-
17 ernment program providing unemployment, social securi-
18 ty, old age pension or other benefits shall not be deemed a
19 waiver of the taxation exemption hereby granted.

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

1 All credit unions which have been heretofore legally
2 organized under chapter thirty-six of the acts of the Legis-
3 lature of one thousand nine hundred twenty-five, and
4 which are in existence on the effective date of this section;
5 and all credit unions which have been heretofore legally
6 organized under article ten of chapter thirty-one of the
7 code of West Virginia, one thousand nine hundred
8 thirty-one, as amended, and which are in existence on the
9 effective date of this section, shall upon the effective date
10 of this section be considered to have been organized un-
11 der the provisions of this article, and shall not be required
12 to obtain a new charter or to reorganize hereunder. All
13 acts and things done by any such credit unions, insofar as
14 such acts and things shall not have constituted any viola-
15 tion of law as it shall heretofore have existed, shall be
16 deemed valid and effective.

ARTICLE 3. POWERS OF CREDIT UNION.**§31B-3-1. General powers.**

- 1 In addition to the powers mentioned elsewhere in this
2 chapter, a credit union may:
- 3 (a) Enter into contracts necessary for the conduct of
4 its business as authorized under this statute;
- 5 (b) Sue and be sued;
- 6 (c) Adopt, use and display a corporate seal;
- 7 (d) Acquire, lease, hold, assign, sell, discount or oth-
8 erwise dispose of property or assets, either in whole or in
9 part, necessary or incidental to its operation;
- 10 (e) Borrow from any source: *Provided*, That a cred-
11 it union must obtain approval of the commissioner in
12 writing of its intention to borrow in excess of an aggregate
13 of twenty percent of its equity capital and shares, and in
14 no event shall its borrowing be in excess of an aggregate
15 of fifty percent of its equity capital and shares;
- 16 (f) Purchase the assets of another credit union;
- 17 (g) Offer related financial services, including, but not
18 limited to, electronic fund transfers, safe deposit boxes,
19 leasing and correspondent arrangements with other finan-
20 cial institutions;
- 21 (h) Hold membership in other credit unions orga-
22 nized under this or other acts, and in associations and
23 organizations controlled by or fostering the interests of
24 credit unions, including a central liquidity facility orga-
25 nized under state or federal law.
- 26 (i) Engage in activities and programs as requested by
27 any governmental unit;
- 28 (j) Act as fiscal agent for and receive payments on
29 share and deposit accounts from a governmental unit;
- 30 (k) Make contributions to any nonprofit civic, chari-
31 table or service organizations;
- 32 (l) Receive the savings of its members either as pay-
33 ment on shares, or as deposits (including the right to con-

34 duct Christmas clubs, vacation clubs and other thrift orga-
35 nizations within the membership);

36 (m) Make loans for provident, productive,
37 nonspeculative purposes to members, including a coopera-
38 tive society or other organization having membership in
39 the credit union.

§31B-3-2. Incidental powers.

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

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

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

ARTICLE 4. MEMBERSHIP.

§31B-4-1. Membership defined.

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

8 (b) Credit union membership shall be limited to,
9 persons within one or more groups having a common
10 bond or bonds of similar occupation, employer, associa-
11 tion or interest, and members of the immediate family of
12 such persons.

§31B-4-2. Organizations.

1 (a) Organizations comprised primarily of individuals
2 who are eligible for membership in the credit union, and
3 corporations whose total number of stockholders or whose
4 majority stockholders are comprised primarily of such

5 individuals, may be admitted to membership in the same
6 manner and under the same conditions as individuals.
7 Likewise, organizations one of whose principal functions
8 is to provide services to persons who are eligible for mem-
9 bership in the credit union may be admitted to member-
10 ship. Other organizations having a commonality of inter-
11 est with the credit union may be admitted to membership
12 with the approval of the commissioner.

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

§31B-4-3. Membership applications.

1 The board of directors of the credit union shall act
2 upon applications for membership or appoint one or more
3 membership officers to approve applications for member-
4 ship under such conditions as the board prescribes. A
5 record of the actions taken by a membership officer shall
6 be made available in writing to the board of directors for
7 inspection. A person denied membership by a member-
8 ship officer may appeal the denial to the credit union's
9 board of directors.

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

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

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

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

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

9 (c) The credit union's board of directors may expel
10 a member pursuant to a written policy adopted by it. All

11 members shall be given written notice of the terms of any
12 such policy upon becoming a member. Any person ex-
13 pelled by the credit union's board of directors shall have
14 the right to request a hearing before it to reconsider the
15 expulsion.

§31B-4-6. Meetings of members.

1 (a) The annual meeting and any special meetings of
2 the members of the credit union shall be held in accor-
3 dance with the bylaws.

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

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

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

§31B-4-7. Calling of special meeting.

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

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

13 (c) The commissioner may also require the directors
14 of a credit union to call a special meeting of the members

15 pursuant to his or her authority under section nine, article
16 two, chapter thirty-one-a of this code.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

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

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

6 (a) Purchase adequate fidelity coverage for the chief
7 executive officer and for other active officers and employ-
8 ees handling or having custody of funds or property;

9 (b) Authorize the employment and compensation of
10 the chief executive officer who shall hire such other per-
11 sons necessary to carry on the business of the credit un-
12 ion;

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

15 (d) Authorize the conveyance of property;

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

18 (f) Appoint any special committees deemed neces-
19 sary;

20 (g) Perform such other duties as the members from
21 time to time direct, and perform or authorize any action
22 not inconsistent with this chapter and not specifically re-
23 served by the bylaws for the members.

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

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

1 (a) The credit union's board shall consist of an odd

2 number of directors, at least five in number, to be elected
3 by and from the members. Elections shall be held at the
4 annual meeting or in such other manner as the bylaws
5 provide. All members of the credit union's board shall
6 hold office for such terms as the bylaws provide, except
7 that terms shall be staggered so that an approximately
8 equal number expire each year.

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

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

§31B-5-3. Record of officials; and filing vacancies.

1 (a) Within twenty days after each organization meet-
2 ing, a record of the names and addresses of the members
3 of the board and such other committees and officials, as
4 required by the commissioner, shall be filed with the com-
5 missioner.

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

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

1 (a) No officer, director or committee member, other
2 than an employee, may be compensated for services, ex-
3 cept as provided in section one, article five of this chapter.

4 However, providing reasonable life, health, accident and
5 similar insurance protection shall not be considered com-
6 pensation. Directors, officers and committee members
7 may be reimbursed for necessary expenses incidental to
8 the performance of official business of the credit union.

9 (b) No director, committee member, officer, agent or
10 employee of the credit union shall in any manner, directly
11 or indirectly, participate in the deliberation upon or the
12 determination of any question affecting that person's pe-
13 cuniary interest or the pecuniary interest of any corpora-
14 tion, partnership or association (other than the credit un-
15 ion) in which that person is directly or indirectly interest-
16 ed.

§31B-5-5. Officers.

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

9 (b) The terms of the officers shall be one year, or
10 until their successors are chosen and have been duly quali-
11 fied.

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

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

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

§31B-5-6. Executive committee.

1 The credit union's board of directors may appoint
2 from its own number an executive committee, consisting

3 of not less than three directors, which may be authorized
4 to act for the board in all respects. These actions are sub-
5 ject to subsequent review by the full credit union's board
6 of directors and any other conditions or limitations pre-
7 scribed by the board of directors.

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

1 (a) The credit committee shall have the general su-
2 pervision of all loans to members. It may approve or
3 disapprove loans, subject to written policies established by
4 the board of directors.

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

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

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

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

§31B-5-8. Audits.

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

8 (b) The supervisory committee of not less than three

9 elected or appointed members shall make or cause to be
10 made such supplementary audits, examinations and verifi-
11 cations of members' accounts as it deems necessary or as
12 are required by the commissioner or by the credit union's
13 board of directors, and submit reports of these supplemen-
14 tary audits to the credit union's board of directors.

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

**§31B-5-9. Fidelity bonds, required oaths and hazard insur-
ance.**

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

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

22 (c) The credit union's board of directors shall also
23 direct and require suitable insurance protection to the
24 credit union against burglary, robbery, theft and other

25 insurable hazards to which the credit union may be ex-
26 posed in the operations of its business on the premises or
27 elsewhere.

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

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

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

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

8 (b) The supervisory committee by a two-thirds vote
9 of the entire committee may recommend suspension of
10 any officer or member of the credit union's board of di-
11 rectors. A meeting of a quorum of the remaining board
12 members shall convene in person and take action on the

13 recommendation, which meeting shall be held not less
14 than seven nor more than twenty-one days after such pro-
15 posed suspension. The suspension matter shall be acted
16 upon at the board meeting and the person shall either be
17 removed for cause or restored to office. If the supervisory
18 committee is not satisfied with the board's action, it
19 may call a special meeting of the members or elect to
20 bring the matter before the next member's regular meet-
21 ing, and the issue will be acted upon at the meeting by the
22 members and the person shall either be removed for cause
23 or reaffirmed to office. At any such member's meeting
24 the person at issue shall have the right to appear and be
25 heard.

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

ARTICLE 6. ACCOUNTS.

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

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

4 (b) A corporate credit union may require its mem-
5 bers to subscribe to and make payments on membership
6 shares.

7 (c) The par value of shares and any membership
8 shares shall be as prescribed in the bylaws. Par value of
9 shares shall not be less than one dollar nor more than ten
10 dollars per share.

11 (d) Membership shares may not be pledged as secu-
12 rity on any loan.

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

§31B-6-2. Dividends.

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

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

§31B-6-3. Deposit accounts.

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

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

9 (c) Funds in share and deposit accounts may be
10 withdrawn for payment to the account holder or to third
11 parties, in such manner and in accordance with such pro-
12 cedures as are established by the board of directors, sub-
13 ject to any rules the commissioner prescribes.

14 (d) Share and deposit accounts shall be subject to
15 any withdrawal notice requirement which is imposed pur-
16 suant to the bylaws.

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

§31B-6-4. Minor accounts.

1 Payments on share and deposit accounts may be
2 received from a minor who may withdraw funds from
3 such accounts including the dividends and interest there-
4 on. Payments on share and deposit accounts by a minor

5 and withdrawals thereof by the minor shall be valid in all
6 respects. For such purposes a minor is deemed of full
7 majority age.

§31B-6-5. Joint accounts.

1 (a) A member may designate any person or persons
2 to own a share or deposit account with the member in joint
3 tenancy with the right of survivorship, as a tenant in com-
4 mon or under any other form of joint ownership permit-
5 ted by law, but no co-owner, unless a member in their own
6 right, shall be permitted to vote, obtain loans, or hold of-
7 fice or be required to pay a membership fee.

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

§31B-6-6. Trust accounts.

1 (a) Share and deposit accounts may be owned by a
2 member in trust for a beneficiary, or owned by a non-
3 member in trust for a beneficiary who is a member.

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

8 (c) Payment of part or all of such a trust account to
9 the party in whose name the account is held shall, to the
10 extent of such payment, discharge the liability of the cred-
11 it union to that party and to the beneficiary, and the credit
12 union shall be under no obligation to see to the applica-
13 tion of such payment.

14 (d) In the event of the death of the party who owns a
15 trust account, if the credit union has been given no other
16 written notice of the existence or terms of any trust and

17 has not received a court order as to disposition of the
18 account, account funds and any dividends or interest
19 thereon shall be paid to the beneficiary.

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

§31B-6-7. Payable-on-death accounts.

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

§31B-6-8. Liens.

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

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

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

8 (b) A credit union which has lost its commitment for
9 such insurance shall within thirty days commence steps to

10 either liquidate, or merge with an insured credit union or
11 apply in writing to the commissioner for additional time to
12 obtain another insurance commitment. The commissioner
13 may grant one or more extensions of time to obtain the
14 insurance commitment upon satisfactory evidence that the
15 credit union has made or is making a substantial effort to
16 achieve the conditions precedent to issuance of the com-
17 mitment.

18 (c) No persons shall be granted a certificate of au-
19 thority to engage in business by the commissioner to op-
20 erate a credit union unless they have obtained a commit-
21 ment for insurance of its share and deposit accounts.

22 (d) The commissioner may make available reports
23 of condition and examination findings to the appropriate
24 insuring organization and may accept any report of exam-
25 ination made on behalf of such organization.

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

§31B-6-10. Reduction in shares.

1 (a) Whenever the losses of any credit union, result-
2 ing from a depreciation in value of its loans or investments
3 or otherwise, exceed the aggregate of its undivided earn-
4 ings, reserves and membership shares if any, so that the
5 estimated value of its assets is less than the total amount of
6 share accounts, and the board of directors determines that
7 the credit union may be subject to involuntary liquidation,
8 the credit union board may propose a reduction in shares.
9 The credit union may by a three-fourths majority vote of
10 those voting on the proposition order a reduction in the
11 share accounts of each of its shareholders to divide the
12 loss in proportion to the shareholdings held by sharehold-
13 ers in their respective share accounts.

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

ARTICLE 7. LOANS.

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

1 A credit union may loan to members for such pur-
2 poses and upon such conditions as the bylaws may pro-
3 vide. The board of directors shall establish written policies
4 with respect to the granting of loans and the extending of
5 lines of credit, including the terms, conditions and accept-
6 able forms of security.

§31B-7-2. Finance charge.

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

§31B-7-3. Additional charges.

1 (a) In addition to interest on loans, a credit union
2 may charge members reasonable expenses in connection
3 with the making, closing, disbursing, extending or renew-
4 ing of loans.

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

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

§31B-7-4. Applications.

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

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

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

5 (b) Loans to members which in the aggregate ex-
6 ceed the amount shown in the schedule below shall be
7 secured by such collateral having a value which is at least
8 equal to any amount exceeding the limits in the following
9 schedule, except that all loans exceeding five thousand
10 dollars not subject to collateral shall be supported by a
11 sworn financial statement:

12 (1) Five hundred dollars in credit unions with assets
13 of less than five thousand dollars;

14 (2) One thousand dollars in credit unions with assets
15 of five thousand dollars and less than twenty five thousand
16 dollars;

17 (3) Two thousand dollars in credit unions with assets
18 of twenty five thousand dollars and less than one hundred
19 thousand dollars;

20 (4) Five thousand dollars in credit unions with assets
21 of one hundred thousand dollars and less than five hun-
22 dred thousand dollars;

23 (5) Seven thousand dollars in credit unions with
24 assets of five hundred thousand dollars and less than one
25 million dollars; and

26 (6) Ten thousand dollars in credit unions with assets
27 of one million dollars or more: *Provided*, That the com-
28 missioner may, upon request and at his or her discretion,
29 approve in writing a higher unsecured loan limit amount
30 for credit unions having assets of one million dollars or
31 more.

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

§31B-7-6. Line of credit.

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

9 (b) Lines of credit shall be subject to periodic re-
10 view by the credit union, in accordance with the written
11 policies of the credit union's board of directors, and ap-
12 proved or disapproved as to the granting of further loan
13 advances.

§31B-7-7. Participation loans.

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

§31B-7-8. Other loan programs.

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

5 (b) A credit union may purchase the conditional
6 sales contracts, notes and similar instruments of its mem-
7 bers.

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

§31B-7-9. Loans to officials.

1 (a) A credit union may permit officers, directors,
2 and members of its supervisory and credit committees to

3 act as comakers, guarantors or endorsers of loans to other
 4 members, subject to the requirements of subsection (b) of
 5 this section.

6 (b) A credit union may make loans to its officers,
 7 directors and members of its supervisory and credit com-
 8 mittees: *Provided*, That:

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

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

19 (c) No credit union officer, director, or member of
 20 its supervisory or credit committee may participate in
 21 making a credit approval of a loan in which they have a
 22 self-interest. If any member of the credit committee
 23 makes an application to borrow money from the credit
 24 union or becomes surety for any other member whose
 25 application for a loan is under consideration, the supervi-
 26 sory committee shall appoint a substitute to act on the
 27 credit committee in place of that member, during the con-
 28 sideration of the application.

ARTICLE 8. OTHER MEMBER SERVICES.

§31B-8-1. Insurance for members.

1 A credit union may purchase or make available cred-
 2 it life or other credit insurance for its members either on
 3 an individual or group basis.

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

1 A credit union may indemnify its officers, directors
 2 or employees by purchase of insurance or otherwise, to
 3 the extent that such indemnification is permitted to that
 4 institution under federal law. Indemnification articles or
 5 bylaws must conform to, or be more restrictive than, that

6 set forth in section nine, article one, chapter thirty-one of
7 this code. The commissioner reserves the right to prohibit
8 or limit, by regulation or order, any indemnification pay-
9 ment for reasons of safety and soundness or nonconfor-
10 mity to the credit union's articles of incorporation or by-
11 laws or to the restrictions placed on indemnification con-
12 tained in this section or other applicable state law.

§31B-8-3. Group purchasing.

1 A credit union may enter into marketing arrange-
2 ments and joint ventures with other credit unions, organi-
3 zations or financial institutions to facilitate its members'
4 voluntary purchase of goods, insurance and other services
5 from third parties, consistent with the purposes of the
6 credit union. A credit union may be compensated for
7 services so provided.

§31B-8-4. Money-type instruments.

1 A credit union may collect, receive and disburse
2 moneys in connection with the providing of negotiable
3 checks, money orders, travelers' checks and other
4 money-type instruments, and the providing of these ser-
5 vices through automated teller machines (ATMs) and for
6 such other purposes as may provide benefit or conve-
7 nience to its members. A credit union may charge fees
8 for such services.

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

1 A credit union may provide pension savings pro-
2 grams and deferred income accounts, including individual
3 retirement accounts. In order to carry out its authority
4 under this section, a credit union may:

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

11 (b) Act as trustees of member funds permitted by
12 federal law to be deposited in a credit union in the form of
13 share deposits either as a deferred compensation or

14 tax-deferral device, provided the credit union obtains the
 15 prior approval to conduct such activity from the board of
 16 banking and financial institutions upon hearing and writ-
 17 ten order.

ARTICLE 9. INVESTMENTS AND RESERVE ALLOCATIONS.

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

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

6 (b) The credit union's board of directors shall desig-
 7 nate a depository or depositories for the funds of the cred-
 8 it union.

§31B-9-2. Authorized investments.

1 Funds not used in loans to members may be invested:

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

7 (b) In securities, obligations, or other instruments of
 8 any state of the United States, the District of Columbia, the
 9 Commonwealth of Puerto Rico, and the several territories
 10 organized by Congress or any political subdivision there-
 11 of;

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

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

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

19 (f) In shares, stocks, deposits in, loans to or other
 20 obligations of any organization, corporation or association
 21 providing services associated with the general purposes of

22 the credit union or engaging in activities incidental to the
23 operations of a credit union. Such investments in the
24 aggregate may not exceed two percent of the credit un-
25 ion's equity capital and shares without written permission
26 of the commissioner;

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

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

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

§31B-9-3. Reserve funds.

1 (a) At the end of each accounting period the credit
2 union shall determine its gross income and from this
3 amount shall set aside and transfer funds to a regular re-
4 serve. The credit union shall transfer to the reserve
5 amounts as required under a schedule set by the national
6 credit union administration (NCUA) or its successor. If
7 no such schedule is set, then the reserve shall be at a rate
8 of ten percent of gross income until such time as the re-
9 serve fund reaches five percent of risk assets; then the
10 formula is decreased to seven percent of gross income
11 until such time as the reserve fund reaches six percent of
12 risk assets; and then the formula is decreased to five per-
13 cent of gross income until the reserve fund attains a maxi-
14 mum of seven percent of risk assets, with subsequent trans-
15 fers required only to maintain the seven percent maxi-
16 mum. The reserves established under this section shall
17 belong to the credit union and shall be held to meet con-
18 tingencies or losses in its business.

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

ARTICLE 10. CHANGE IN CORPORATE STATUS.**§31B-10-1. Voluntary liquidation.**

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

4 (b) If it decides to begin the procedure, the board of
5 directors shall adopt a resolution recommending the credit
6 union be dissolved voluntarily, and directing that the ques-
7 tion of liquidation be submitted to the members.

8 (c) Within ten days after the board of directors de-
9 cides to submit the question of liquidation to the members,
10 the president shall notify the commissioner and the insur-
11 ing organization in writing, setting forth the reasons for
12 the proposed liquidation. Within ten days after the mem-
13 bers act on the question of liquidation, the president shall
14 notify the commissioner and the insuring organization in
15 writing as to the action of the members on the proposal.

16 (d) As soon as the board of directors decides to
17 submit the question of liquidation to the members, pay-
18 ments on, withdrawal of, and making any transfer of share
19 and deposit accounts to loans and interest, making invest-
20 ments of any kind, and granting loans may be restricted or
21 suspended pending action by members on the proposal to
22 liquidate. On approval by the members of such proposal,
23 all such business transactions shall be permanently discon-
24 tinued. Necessary expenses of operation shall, however,
25 continue to be paid on authorization of the board of di-
26 rectors or liquidating agent during the period of liquida-
27 tion.

28 (e) For a credit union to enter voluntary liquidation,
29 approval by a majority of the members in writing or by a
30 two-thirds majority of the members present at a regular or
31 special meeting of the members is required. When autho-
32 rization for liquidation is to be obtained at a meeting of
33 the members, notice in writing shall be given to each
34 member, by first class mail, at least ten days prior to such
35 meeting.

36 (f) A liquidating credit union shall continue in exis-

37 tence for the purpose of discharging its debts, collecting
38 on loans and distributing its assets, and doing all acts re-
39 quired in order to wind up its business and may sue and
40 be sued for the purpose of enforcing such debts and obli-
41 gations until its affairs are fully concluded.

42 (g) The board of directors or the liquidating agent
43 shall distribute the assets of the credit union or the pro-
44 ceeds of any disposition of the assets in the sequence de-
45 scribed in subsection (f), section four, article one of this
46 chapter.

47 (h) As soon as the board of directors or the liquidat-
48 ing agent determines that all assets from which there is a
49 reasonable expectancy of realization have been liquidated
50 and distributed as set forth in this section, a certificate of
51 dissolution shall be executed on a form prescribed by the
52 commissioner and filed with the secretary of state, which
53 shall after filing and indexing same, be forwarded to the
54 commissioner, whereupon such credit union shall be dis-
55 solved. The liquidating agent shall return all pertinent
56 books and records of the liquidating credit union to the
57 commissioner.

§31B-10-2. Merger of credit unions.

1 (a) A credit union organized under this chapter may,
2 with the approval of the commissioner and regardless of
3 common bond, merge with one or more other credit un-
4 ions organized under this chapter, the laws of another state
5 or territory of the United States or the laws of the United
6 States.

7 (b) When two or more credit unions merge, they
8 shall either designate one of them as the continuing credit
9 union, or they shall structure a totally new credit union
10 and designate it as the new credit union. If the latter pro-
11 cedure is followed, the new credit union shall be orga-
12 nized under article two of this chapter. All participating
13 credit unions other than the continuing or new credit un-
14 ion shall be designated as merging credit unions.

15 (c) Any merger of credit unions shall be done ac-
16 cording to a plan of merger. After approval by the boards
17 of directors of all participating credit unions, the plan shall

18 be submitted to the commissioner for review and hearing
19 to grant preliminary approval. If the plan includes the
20 creation of a new credit union, all documents required by
21 section one, article two of this chapter shall be submitted
22 as part of the plan. In addition to any other documents or
23 information required by the commissioner, each partici-
24 pating credit union shall submit the following:

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

27 (2) The vote of the directors in favor of the adop-
28 tion of the plan; and

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

31 (d) The commissioner shall after review and hearing,
32 grant preliminary approval by written order, if: (i) The
33 plan has been approved properly by each board of direc-
34 tors; (ii) the documentation required to form a new credit
35 union, if any, complies with section one, article two of this
36 chapter; (iii) the action would not result or tend to create a
37 monopoly, or substantially lessen competition, or other-
38 wise further a restraint of trade, unless the anticompetitive
39 effects of the proposed action are clearly outweighed in
40 the public interest by the probable effect of the action in
41 meeting the convenience and needs of the members to be
42 served; and (iv) taking into consideration the financial and
43 managerial resources and further prospects of the credit
44 unions concerned, the action would not be contrary to the
45 best interests of the community whose shares are affected
46 by such action, nor detrimental to the safety and sound-
47 ness of the credit union to be acquired.

48 (e) After the commissioner grants preliminary ap-
49 proval, each merging credit union shall, unless waived by
50 the commissioner, conduct a membership vote on its par-
51 ticipation in the plan. The vote shall be conducted either
52 at a special membership meeting called for that purpose or
53 by mail ballot. If a majority of the members voting ap-
54 prove the plan, the credit union shall submit a record of
55 that fact to the commissioner indicating the vote by which
56 the members approved the plan and either the time and

57 place of the membership meeting or the mailing date and
58 closing date of the mail ballot.

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

63 (g) The commissioner shall grant final approval of
64 the plan of merger after determining that the requirements
65 of subsection (e) of this section in the case of each merg-
66 ing credit union have been met. If the plan of merger
67 includes the creation of a new credit union, the commis-
68 sioner must approve the organization of the new credit
69 union under section two, article two of this chapter as part
70 of the approval of the plan of consolidation. The com-
71 missioner shall notify all participating credit unions of the
72 approval of the plan.

73 (h) Upon final approval of the plan by the commis-
74 sioner and the filing of the proper documents with the
75 office of the secretary of state, all property, property
76 rights, and members' interests in each merging credit un-
77 ion shall vest in the continuing or new credit union as
78 applicable without deed, endorsement, or other instrument
79 of transfer, and all debts, obligations and liabilities of each
80 merging credit union shall be deemed to have been as-
81 sumed by the continuing or new credit union. The rights
82 and privileges of the members of each participating credit
83 union shall remain intact; however, if a person is a mem-
84 ber of more than one of the participating credit unions,
85 that person shall be entitled to only a single set of mem-
86 bership rights in the continuing or new credit union.

87 (i) If the surviving or new credit union created by
88 the transaction is chartered by another state or territory of
89 the United States, it shall, in addition to the criteria set
90 forth in subsection (c) of this section, be subject to the
91 requirements of section six, article two of this chapter. No
92 merger resulting in an out-of-state credit union acquiring
93 a West Virginia credit union shall be permitted unless that
94 other state or territory permits a West Virginia credit union
95 to merge or acquire credit unions in their state or territory
96 on terms that are, on the whole, substantially no more

97 restrictive than those established under the terms of this
98 section: *Provided*, That no such merger shall be approved
99 where the West Virginia credit union to be acquired has
100 been in operation for less than two years.

101 (j) Notwithstanding any other provision of law, the
102 commissioner may, without prior hearing, authorize a
103 merger or consolidation of a credit union which is insol-
104 vent or is about to be insolvent with any other credit union
105 or may authorize a credit union to purchase any of the
106 assets of, or assume any of the liabilities of, any other
107 credit union which is insolvent or about to be insolvent if
108 the commissioner is satisfied that:

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

111 (2) Other alternatives are not reasonably available;
112 and

113 (3) The public interest would best be served by
114 approval of such merger, consolidation, purchase or as-
115 sumption.

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

126 (l) For purposes of the authority contained in subsec-
127 tion (k) of this section, insured share and deposit accounts
128 of the credit union may upon consummation of the pur-
129 chase and assumption be converted to insured deposits or
130 other comparable accounts in the acquiring institution,
131 and the commissioner and the insuring organization shall
132 be absolved of any liability to the credit union's members
133 with respect to those accounts.

§31B-10-3. Conversion.

1 (a) A credit union incorporated under the laws of
2 this state may be converted to a credit union organized
3 under the laws of any other state or under the laws of the
4 United States, by complying with the following require-
5 ments:

6 (1) The proposition for such conversion shall first
7 be approved, and a date set for a vote thereon by the
8 members, (either at a meeting to be held on such date or
9 by written ballot to be filed on or before such date), by a
10 majority of the directors of the said West Virginia state
11 credit union. Written notice of the proposition and of the
12 date set for the vote shall then be delivered in person to
13 each member, or mailed to each member at the address for
14 such member appearing on the records of the credit un-
15 ion, not more than thirty or less than seven days prior to
16 such date. Approval of the proposition for conversion
17 shall be by the affirmative vote of two thirds of the mem-
18 bers, in person or in writing;

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

36 (3) Promptly after the vote approving the conversion
37 is taken, or after approval of the commissioner of banking,
38 where such approval is required, and in no event later than
39 ninety days thereafter, the credit union shall take such

40 action as may be necessary under the applicable federal or
 41 state law to make it a federal credit union or credit union
 42 of another state, and within ten days after receipt of the
 43 federal credit union charter or out-of-state credit union
 44 charter there shall be filed with the commissioner of bank-
 45 ing a copy of the charter thus issued. Upon such filing, the
 46 credit union shall cease to be a West Virginia state char-
 47 tered credit union;

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

53 (b) A credit union organized under the laws of the
 54 United States or of any other state may convert to a credit
 55 union incorporated under the laws of this state. To effect
 56 such a conversion, a credit union must comply with all the
 57 requirements of the jurisdiction under which it was origi-
 58 nally organized and the requirements of the laws and rules
 59 of this state, and file proof of such compliance with the
 60 commissioner. The commissioner shall generally treat the
 61 conversion to a West Virginia state chartered credit union
 62 as a formation of a new credit union pursuant to article
 63 two of this chapter, and the procedures and requirements
 64 therein shall be followed to the extent applicable.

ARTICLE 11. CORPORATE CREDIT UNION.

§31B-11-1. Incorporation.

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

§31B-11-2. Purposes.

1 The purposes of the corporate credit union are to:

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

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

7 (c) Obtain liquid funds from other credit union orga-
8 nizations, financial intermediaries and other sources;

9 (d) Foster and promote in cooperation with other
10 state, regional and national corporate credit unions and
11 credit union organizations or associations the economic
12 security, growth and development of member credit un-
13 ions;

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

16 (f) Perform such other services of benefit to its mem-
17 bers which are authorized by the commissioner.

§31B-11-3. Membership.

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

8 (b) A member of the corporate credit union shall
9 designate one person to be its authorized representative to
10 attend meetings of the corporate credit union and to vote
11 on behalf of the member. A credit union member of the
12 corporate credit union may only designate as its autho-
13 rized representative a member of its own credit union.

§31B-11-4. Organization.

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

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

10 (c) The bylaws shall provide for the selection of a
11 board of directors of at least five persons, all of whom

12 shall be authorized representatives of members. The by-
13 laws shall require those applying for membership to sub-
14 scribe to membership shares or other shares, or both, in a
15 minimum amount as specified in the bylaws.

§31B-11-5. Powers and privileges.

1 (a) The corporate credit union shall enjoy the pow-
2 ers and privileges of any other credit union incorporated
3 under this chapter in addition to those powers enumerated
4 in this article, notwithstanding any limitations or restric-
5 tions found elsewhere in this chapter.

6 (b) The corporate credit union may:

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

13 (2) Make loans to or invest in a member or in any
14 credit union incorporated by this state, by another state or
15 territory of the United States or by the United States,
16 whether or not such credit union is a member of the cor-
17 porate credit union;

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

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

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

30 (6) Purchase, sell, and hold investment securities
31 which are marketable obligations in the form of bonds,
32 notes or debentures which are salable under ordinary

33 circumstances with reasonable promptness at a fair value.
34 All investments and related contracts and agreements shall
35 be made in accordance with written investment policies
36 established by the board of directors, and shall conform to
37 those investments permitted under section two, article nine
38 of this chapter;

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

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

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

46 (10) Sell all or a part of its assets to another deposi-
47 tory financial institution, purchase all or part of the assets
48 of another depository financial institution and assume the
49 liabilities of the selling depository financial institution and
50 those of its members or depositors. To the extent that the
51 action results in a merger, the commissioner shall direct
52 that the appropriate provisions of section two, article ten of
53 this chapter be followed;

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

56 (12) Act as agent for members, other credit unions
57 and credit union organizations in paying, receiving, trans-
58 ferring the assets and liabilities received and invested as
59 permitted in this article;

60 (13) Receive and hold in safekeeping the securities
61 and other assets of its members and, in connection there-
62 with, make such disposition of such assets as may be
63 agreed to or directed by the member; and

64 (14) Exercise all incidental powers that are conve-
65 nient, suitable or necessary to enable it to carry out its
66 purposes.

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

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

1 The corporate credit union may enter into agree-
2 ments and subscribe to any required shares for the pur-
3 pose of participation in the national credit union adminis-
4 tration central liquidity facility created by Public Law
5 95-630 or any other state or federal central liquidity facil-
6 ity or central financial system available to credit unions. It
7 may also enter into agreements with any third parties to
8 aid credit unions to obtain additional sources of liquidity.

§31B-11-7. Security interest.

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

§31B-11-8. Meetings.

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

§31B-11-9. Fees.

1 Corporate credit unions shall pay the assessment and
2 fees set for credit unions under this code to defray the
3 costs to the commissioner and board for their supervision,
4 examination and administration. The assessments and
5 operating fees established by the commissioner or Legisla-
6 ture may make allowances for the special purposes and
7 operations of the corporate credit union.

§31B-11-10. Reserves.

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

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

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

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

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

§31B-11-11. Annual audit.

1 (a) The supervisory committee of the corporate
2 credit union shall cause an annual audit to be made by an
3 independent certified public accountant and shall submit
4 the annual audit report to the board of directors. A sum-
5 mary of the audit report shall be submitted to the mem-
6 bership at the next annual meeting.

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

§31B-11-12. Securities exemption.

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

ARTICLE 12. PENALTIES.**§31B-12-1. Criminal liability.**

1 Any credit union officer, director, employee or
2 agent, who willfully does any of the following, shall be
3 deemed guilty of a felony, and may, upon conviction
4 thereof, be fined not more than ten thousand dollars or
5 imprisoned not less than one year nor more than five
6 years, or both:

7 (a) With intent to deceive, falsifies any books of ac-
8 count, report, statement, record or other document of a
9 credit union whether by alteration, false entry, omission or
10 otherwise;

11 (b) Signs, issues, publishes or transmits to a govern-
12 ment agency any book of account, report, statement, re-
13 cord or other document which that person knows to be
14 false;

15 (c) By means of deceit, obtains a signature to a writ-
16 ing which is the subject of forgery;

17 (d) With intent to deceive, destroys any credit union
18 book of account, report, statement, record or other docu-
19 ment.

§31B-12-2. Penalty for false reports.

1 Whoever maliciously and knowingly spreads false
2 reports about the management or finances of any credit
3 union shall be fined not less than twenty-five dollars, nor
4 more than two hundred dollars or be imprisoned for not
5 less than thirty days nor more than one year, or both.

§31B-12-3. Civil penalties.

1 Any person who violates this chapter, the rules issued
2 pursuant thereto, or any orders lawfully entered by the
3 commissioner or board of banking and financial institu-
4 tions may be subject to civil penalties in an action brought
5 by the commissioner or board in an amount not less than
6 fifty dollars nor more than five thousand dollars for each
7 violation.

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

Randy Spoonover

Chairman Senate Committee

Randy Deacon

Chairman House Committee

Originating in the House.

Takes effect July 1, 1996.

Carroll Allen

Clerk of the Senate

Bryan W. Sney

Clerk of the House of Delegates

Carl Ray Tomblin

President of the Senate

Paul E. Canner

Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1996.

Walter C. Coker

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 10:07 am