

1 HB167
2 180756-3
3 By Representative Black
4 RFD: Financial Services
5 First Read: 09-FEB-17

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8 SYNOPSIS: Under existing law, credit unions must be
9 examined at least annually by employees of the
10 Alabama Credit Union Administration.

11 This bill would require credit unions to be
12 examined by employees of the Alabama Credit Union
13 Administration at least every 18 months.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to credit unions; to amend Section 5-17-8,
20 Code of Alabama 1975, as amended by Act 2016-133, 2016 Regular
21 Session, to extend the time for how often a credit union must
22 be examined by employees of the Alabama Credit Union
23 Administration from every 12 months to every 18 months.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 5-17-8, Code of Alabama 1975, as
26 amended by Act 2016-133, 2016 Regular Session, is amended to
27 read as follows:

1 "§5-17-8.

2 "(a) Credit unions shall report to the Administrator
3 of the Alabama Credit Union Administration at least annually
4 on or before January 31 in such manner and form as required by
5 the administrator for that purpose. Additional reports may be
6 required. Credit unions shall be examined at least ~~annually~~
7 every 18 months by employees of the ~~administrator~~
8 administration or by other persons designated by the
9 administrator. For failure to file reports when due, unless
10 excused for cause by the administrator, the credit union shall
11 pay to the State Treasurer five dollars (\$5) for each day of
12 its delinquency.

13 "(b) If the administrator determines that the credit
14 union is violating this chapter, or is insolvent, the
15 administrator may suspend operations of the credit union by
16 issuing an order requiring that the credit union cease
17 operations pending a hearing on the revocation of the
18 certificate of approval, or the administrator may set a date
19 for a hearing on the revocation of the certificate of approval
20 without suspending operations of the credit union. If the
21 administrator suspends operations of the credit union, a
22 hearing on the revocation of the certificate of authority
23 shall be held by the administrator if requested within 90 days
24 from the date of the order requiring suspension of operations.
25 If demanded by the credit union, the hearing on revocation of
26 the certificate of authority, whether or not the administrator
27 has suspended operations of the credit union pending the

1 hearing, shall be conducted on the record by the administrator
2 who shall also make findings of fact and a written
3 determination concerning revocation of the certificate of
4 authority. The determination may contain an order requiring
5 that credit union to immediately suspend operations or
6 continue in effect a previous order requiring the suspension
7 of operations. If the determination is that the credit union
8 is violating this chapter, or is insolvent, and that the
9 certificate of authority be revoked, and if, for a period of
10 15 days after the hearing, any violation continues, the
11 administrator may revoke the certificate and take possession
12 of the business and property of the credit union and maintain
13 possession until the administrator shall permit it to continue
14 business or its affairs are finally liquidated through merger
15 or otherwise.

16 "(c) The administrator may, with the approval of a
17 majority of the Credit Union Board of the Alabama Credit Union
18 Administration, issue a cease and desist order upon finding
19 that the credit union or any officer, director, committee
20 member, or employee has done any one of the following:

21 "(1) Committed any violation of a law, rule, or
22 regulation.

23 "(2) Engaged or participated in any unsafe or
24 unsound practice in connection with the credit union business.

25 "(3) Engaged in any act, omission, or practice which
26 constitutes a breach of fiduciary duty to the credit union.

1 "(4) Committed any fraudulent or questionable
2 practice in the conduct of the credit union's business which
3 endangers the credit union's reputation or threatens
4 insolvency.

5 "(5) Violated any condition imposed in writing by
6 the administrator or any written agreement made with the
7 administrator.

8 "(6) Concealed, destroyed, removed, falsified, or
9 perjured any book, record, paper, report, statement, or
10 account related to the business and affairs of the credit
11 union.

12 "Any cease and desist order shall be effective not
13 earlier than 10 calendar days after it is delivered to the
14 credit union. The credit union or any person subject to a
15 cease and desist order shall have 10 calendar days from the
16 receipt of any cease and desist order to appeal to the Credit
17 Union Board of the Alabama Credit Union Administration by
18 serving the administrator with a written notice of appeal
19 within the 10-day period. Upon receipt of a notice of appeal
20 from the credit union, the effect of the cease and desist
21 order will be suspended pending a decision upon appeal;
22 provided that a majority of the Credit Union Board of the
23 Alabama Credit Union Administration may order that a cease and
24 desist order be in force and effect pending the decision on
25 appeal. A hearing of any appeal shall be held before the
26 Credit Union Board of the Alabama Credit Union Administration
27 within 60 calendar days of the notice of appeal and the

1 decision of the Credit Union Board shall be rendered within 30
2 calendar days after the conclusion of the hearing.

3 "(d) The Administrator of the Alabama Credit Union
4 Administration may suspend from office and prohibit further
5 participation in any manner in the conduct of the affairs of a
6 credit union, any director, officer, committee member, or
7 employee who has done any one of the following:

8 "(1) Committed any violation of a law, rule, or
9 regulation.

10 "(2) Engaged or participated in any unsafe or
11 unsound practice in connection with the credit union business.

12 "(3) Engaged in any act, omission, or practice which
13 constitutes a breach of fiduciary duty to the credit union.

14 "(4) Committed any fraudulent or questionable
15 practice in the conduct of the credit union's business which
16 endangers the credit union's reputation or threatens
17 insolvency.

18 "(5) Violated any condition imposed in writing by
19 the administrator or any written agreement made with the
20 administrator.

21 "(6) Concealed, destroyed, removed, falsified, or
22 perjured any book, record, paper, report, statement, or
23 account related to the business and affairs of the credit
24 union.

25 "(7) Unless the administrator directs otherwise, the
26 prohibition against participation in the conduct of the
27 affairs of a credit union shall remain effective until it is

1 rescinded by a vote of the Credit Union Board of the Alabama
2 Credit Union Administration.

3 "(e) A person subject to an order issued under
4 subsection (d) may file an appeal in writing delivered to the
5 administrator not more than 10 calendar days after the
6 issuance of the order. Not later than 60 calendar days after
7 the filing of an appeal, the Credit Union Board of the Alabama
8 Credit Union Administration shall hold a hearing and not later
9 than 30 calendar days after the conclusion of the hearing, the
10 Credit Union Board shall issue a decision. The hearing shall
11 be confidential.

12 "(f) The Administrator of the Alabama Credit Union
13 Administration, with the approval of a majority of the Credit
14 Union Board of the Alabama Credit Union Administration, ex
15 parte without notice, may appoint the Alabama Credit Union
16 Administration as conservator and immediately take possession
17 and control of the business and assets of any state-chartered
18 credit union in any case in which any one of the following
19 occurs:

20 "(1) The Alabama Credit Union Administration
21 determines that the action is necessary to conserve the assets
22 of any state-chartered credit union or the interests of the
23 members of the credit union.

24 "(2) A credit union, by resolution of its board of
25 directors, consents to the action by the Alabama Credit Union
26 Administration.

1 "(3) There is a willful violation of a
2 cease-and-desist order which has become final.

3 "(4) There is concealment of books, papers, records,
4 or assets of the credit union or refusal to submit books,
5 papers, records, or affairs of the credit union for inspection
6 to any examiner or to any lawful agent of the Alabama Credit
7 Union Administration.

8 "(g) Not later than 10 calendar days after the date
9 on which the Alabama Credit Union Administration takes
10 possession and control of the business and assets of a credit
11 union pursuant to subsection (f), officials of the credit
12 union who were terminated by the conservator may apply to the
13 circuit court for the judicial circuit in which the principal
14 office of the credit union is located for an order requiring
15 the administration to show cause why it should not be enjoined
16 from continuing possession and control. Except as provided in
17 this subsection, no court may take any action, except at the
18 request of the Credit Union Board by regulation or order, to
19 restrain or affect the exercise of powers or functions of the
20 board as conservator.

21 "(h) The administrator shall report to the Credit
22 Union Board of the Alabama Credit Union Administration at
23 least semi-annually on the condition of the credit unions in
24 which the administration serves as conservator. Reports shall
25 contain the following:

26 "(1) The most recent income statement and balance
27 sheet of the credit union.

1 "(2) Actions taken since the last report by the
2 administrator in its role as conservator of the credit union.

3 "(3) A detailed report of all expenditures,
4 reimbursements, and other financial considerations paid out of
5 the assets of the credit union to the Alabama Credit Union
6 Administration or its designated agents during
7 conservatorship.

8 "(4) A business plan outlining necessary actions and
9 timetables under which the credit union would remain under
10 conservatorship.

11 "(i) The Alabama Credit Union Administration may
12 maintain possession and control of the business and assets of
13 the credit union and may operate the credit union until the
14 time as the following occurs:

15 "(1) The administrator shall permit the credit union
16 to continue business subject to the terms and conditions as
17 may be imposed by the Alabama Credit Union Administration.

18 "(2) The credit union is liquidated in accordance
19 with the provisions of Section 5-17-21.

20 "(3) The Credit Union Board of the Alabama Credit
21 Union Administration votes by a majority of voting members
22 that the Alabama Credit Union Administration shall relinquish
23 possession and control of the credit union. Such vote shall be
24 held on at least a semi-annual basis while the credit union is
25 held in conservatorship by the Alabama Credit Union
26 Administration.

1 "(j) The Alabama Credit Union Administration may
2 appoint special agents as it considers necessary in order to
3 assist the administration in carrying out its duties as a
4 conservator under this section.

5 "(k) All costs incurred by the administration in
6 exercising its authority under this section and Section
7 5-17-8.1, including, without limitation, all expenses and
8 legal fees incurred in exercising its authority or defending
9 any action taken pursuant to its exercise of authority, and
10 any appeal by any credit union or by any director, officer,
11 committee member, or employee thereof shall be paid out of the
12 assets of the credit union.

13 "(l) The conservator shall have all powers of the
14 members, the directors, the officers, and the committees of
15 the credit union and shall be authorized to operate the credit
16 union in its own name or to conserve its assets in the manner
17 and extent authorized by the administration.

18 "(m) After taking possession of the property and
19 business of a credit union through conservatorship, the
20 conservator may terminate or adopt any executory contract to
21 which the credit union may be a party. The termination of any
22 contracts shall be made within six months after the
23 conservator has obtained knowledge of the existence of the
24 contract or lease. Any provision in the contract or lease
25 which provides for damages or cancellation fees upon
26 termination shall not be binding on the conservator or credit
27 union. The directors, the conservator, and the credit union

1 are not liable for damages arising from or relating to such
2 executory contracts.

3 "(n) The administrator may appoint a temporary board
4 of directors to any credit union subject to conservatorship.

5 "(o) (1) Notwithstanding any other provision of state
6 law, if the administrator determines that an emergency
7 requiring expeditious action exists with respect to a credit
8 union, that other alternatives are not reasonably available
9 consistent with National Credit Union Administration
10 precedent, and that the public interest, including the
11 interests of the members of the credit union, would best be
12 served by such action, the administrator may do either of the
13 following:

14 "a. Initiate the involuntary merger of a credit
15 union that is insolvent or is in danger of insolvency with any
16 other credit union or may authorize a credit union to purchase
17 any of the assets of, or assume any of the liabilities of, any
18 other credit union that is insolvent or in danger of
19 insolvency.

20 "b. Authorize a financial institution whose deposits
21 or accounts are insured to purchase any of the assets of, or
22 assume any of the liabilities of, a credit union that is
23 insolvent or in danger of insolvency, except that prior to
24 exercising this authority the administrator shall attempt to
25 effect a merger with, or purchase and assumption by, another
26 credit union as provided in paragraph a.

1 "(2) For purposes of the authority contained in this
2 subsection, insured share and deposit accounts of the credit
3 union, upon consummation of the purchase and assumption, may
4 be converted to insured deposits or other comparable accounts
5 in the acquiring institution, and the administrator and the
6 insuring organization shall be relieved of any liability to
7 the credit union's members with respect to those accounts."

8 Section 2. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.