

HOUSE BILL No. 2561

AN ACT concerning financial institutions; relating to credit unions; authorizing a domestic credit union to do business outside the state; providing civil penalties for certain violations; allowing informal agreements with the credit union administrator; eliminating the requirement to submit duplicate certificates of organization and bylaws; establishing appeals procedures for suspension of credit and supervisory committee members; requiring members of the merging credit union to approve a merger of credit unions; amending K.S.A. 17-2201, 17-2208 and 17-2228 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) A domestic credit union may do business outside of the state if permitted by the laws of that jurisdiction.

(b) This section shall be a part of and supplemental to the state credit union code.

New Sec. 2. (a) After providing notice and an opportunity for a public hearing in accordance with the Kansas administrative procedure act, the administrator may assess against and collect a civil money penalty from any credit union that:

(1) Engages or participates in any unsafe or unsound practice in connection with a credit union; or

(2) violates or knowingly permits any person to violate the provisions of:

(A) The state credit union code;

(B) rules and regulations promulgated pursuant to the state credit union code; or

(C) any lawful order of the administrator.

(b) The civil money penalty shall not exceed \$1,000 per day such violation continues. No civil money penalty shall be assessed for the same act or practice if another governmental agency has taken similar action against the credit union. In determining the amount of the civil money penalty to be assessed, the administrator shall consider:

(1) The good faith of the credit union;

(2) the gravity of the violation;

(3) any previous violations by the credit union;

(4) the nature and extent of any past violations; and

(5) such matters as the administrator deems appropriate.

(c) Upon waiver by the respondent of the right to a public hearing concerning an assessment of a civil money penalty, the hearing or a portion thereof may be closed to the public when concern arises about the prompt withdrawal of moneys from or the safety and soundness of the credit union.

(d) This section shall be a part of and supplemental to the state credit union code.

New Sec. 3. (a) The administrator may enter into an informal agreement with any credit union for a plan of action to address possible safety or soundness concerns, violations of law or any weakness displayed by the credit union if the administrator determines that the credit union displays:

(1) Possible safety and soundness concerns or is violating, has violated or is about to violate any law, rules and regulations or order of the administrator resulting in a less than satisfactory condition but not to a degree requiring a formal administrative action; or

(2) any weakness that if not properly addressed and corrected would reasonably be expected to result in future safety and soundness concerns, violations of law or rules and regulations and further deterioration in the condition of the credit union.

(b) The adoption of an informal agreement authorized by this section shall not be subject to the provisions of K.S.A. 77-501 et seq. or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this section shall not be considered an order or any other agency action and shall be considered confidential examination material pursuant to K.S.A. 17-2227, and amendments thereto.

(c) This section shall be a part of and supplemental to the state credit union code.

Sec. 4. K.S.A. 17-2201 is hereby amended to read as follows: 17-2201. (a) Any seven persons who are residents of the state of Kansas may apply to the administrator of the credit union department for permission to organize a credit union by signing ~~in duplicate~~ a certificate of organization and entering into articles of incorporation, in which they shall bind themselves to comply with its requirements and with all the laws, rules and regulations applicable to credit unions. The articles of incorporation shall set forth:

(1) The name of the proposed credit union, which shall contain the words "credit union" and shall not be the same as that of any other credit union in this state.

(2) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed by each.

(3) A statement that organization as a credit union is desired under the state credit union code, the par value of the shares and the manner in which the par value of shares may be changed from time to time.

(4) The address, which shall include the street, number, city and county of the corporation's registered office in this state and the name of its resident agent at such address.

(b) At the time of filing the articles of incorporation with the administrator, the organizers shall submit, ~~in duplicate, sets of~~ bylaws ~~which~~ *that* shall provide:

(1) The date of the first annual meeting, the manner in which subsequent annual meeting dates shall be determined, the manner of notification of meetings and conducting the meetings, the number of members constituting a quorum and regulations as to voting.

(2) The number of directors, which shall not be less than five, all of whom must be members, their powers and duties, together with the duties of officers elected by the board of directors.

(3) The qualifications for membership.

(4) The number of members of the credit committee and of the supervisory committee, which shall not be less than three each, and their respective powers and duties.

(5) The conditions under which shares may be issued.

(c) The administrator shall approve the articles of incorporation, if they are in conformity with this act and the bylaws, if satisfied that the proposed field of operation is favorable to the success of such credit union, and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. If the administrator approves the articles of incorporation, the administrator shall issue to the proposed organizers a certificate of approval annexed to the ~~duplicate of the~~ articles of incorporation and of the bylaws. The articles of incorporation, with the certificate of approval annexed, shall be executed and filed and become effective in the manner prescribed in the general corporation code. The copy of the articles of incorporation filed with the secretary of state shall be accompanied by the fee prescribed by K.S.A. 17-7506, and amendments thereto. ~~The articles of incorporation of any credit union approved as provided in this section by the secretary of state in the same manner as other domestic corporations are approved whether or not acted upon by the charter board.~~

Sec. 5. K.S.A. 17-2208 is hereby amended to read as follows: 17-2208. (a) Annually the members of the credit union shall elect members of a board of directors as shall be provided in the bylaws. The bylaws shall state the manner of appointment or election of a supervisory committee. If the bylaws provide for a credit committee, the credit committee may be appointed by the board of directors or elected by the members of the credit union. All directors and committee members shall be chosen from the membership. Directors and committee members shall hold office for such terms as may be provided in the bylaws.

(b) One member of the supervisory committee may be a director other than the treasurer. Regular terms of supervisory committee members shall be for such term as shall be provided in the bylaws and

until the selection and qualification of their successors.

(c) All members of the board and committees and all officers shall be sworn and shall hold their several offices for such terms as may be provided in the bylaws. The oath shall be subscribed by the individual taking it and certified by the officer before whom it is taken and shall immediately be transmitted to the administrator and filed and preserved in the administrator's office.

(d) The board of directors may suspend or remove any or all members of the credit and supervisory committees for failure to perform their duties. *The suspended committee member may appeal their suspension. Such appeal shall be acted upon by the members of the credit union at a meeting of the members that shall be held within 60 days after such suspension. Any person suspended shall have the right to appear and be heard at such meeting.* Any vacancy shall be filled in accordance with the credit union's bylaws.

Sec. 6. K.S.A. 17-2228 is hereby amended to read as follows: 17-2228. (a) Any credit union, with the approval of the administrator, may merge with another credit union under the charter of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the members of ~~each such~~ *the merging* credit union organized under the provisions of this act, either by the affirmative vote of a majority of those members present at a meeting of its members duly called for such purpose or by the affirmative vote in writing of a majority of its members who participate in the vote on the merger plan without a meeting. After such agreement by the directors and approval of the members of ~~each the merging~~ credit union organized under the provisions of this act, the president or chairperson of the board and secretary of each credit union organized under the provisions of this act, shall execute a certificate of merger that shall set forth the following:

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

~~(b)~~(2) the vote in favor of adoption of the plan;

~~(c)~~(3) a copy of the resolution or other action by which the plan was agreed upon;

~~(d)~~(4) the time and place of the meeting of the members at which the plan agreed upon was approved; and

~~(e)~~(5) the vote by which the plan was approved by the members.

(b) Such certificate of merger, a copy of the plan of merger agreed upon, and any necessary approvals or consents for a merging credit union organized under the provisions of any other jurisdiction shall be forwarded to the administrator. Upon receipt of these documents, the administrator shall determine whether the merger meets the statutory requirements for field of membership set forth in K.S.A. 17-2205, and amendments thereto. If the merger is approved, a copy of the certificate, certified by the administrator, shall be returned to the merging credit unions within 30 days. The date of certification of the merger by the administrator shall constitute the date of approval. Upon any such merger so effected, all property, property rights and interest of the merged credit union shall vest in the continuing credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the continuing credit union under whose charter the merger was effected.

(c) This section shall be construed, whenever possible, to permit a credit union chartered under any other act to merge with one chartered under this act or to permit one chartered under this act to merge with one chartered under any other act. The charter of the terminating credit union shall, upon merger, be canceled and voided by operation of law.

Sec. 7. K.S.A. 17-2201, 17-2208 and 17-2228 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.