

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 491
Committee Substitute Favorable 4/7/89

Short Title: Credit Union Regulation.

(Public)

Sponsors:

Referred to:

March 8, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE LAW REGARDING SUSPENSION OF CREDIT
3 UNION CHARTERS AND TO AUTHORIZE APPOINTMENT OF A
4 CONSERVATOR TO MANAGE THE AFFAIRS OF A CREDIT UNION WHEN
5 NECESSARY.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 54-109.92 reads as rewritten:

8 "~~§ 54-109.92. Suspension.~~ **Suspension and conservation.**

9 (a) The Administrator of Credit Unions may determine in the performance of his
10 duties under this Subchapter that a credit union is insolvent or in imminent danger of
11 insolvency, or that an officer, director, or employee of a credit union, or the credit union
12 itself, acting by and through an officer, director, or employee, has:

13 (1) Affected or is likely to affect the safety or soundness of the credit
14 union by a violation of:

15 a. This Subchapter,

16 b. A rule adopted under this Subchapter, or

17 c. Any federal law or regulation applicable to credit unions;

18 (2) Violated, neglected, or refused to comply with a duly issued final order
19 of the Administrator of Credit Unions or the Credit Union
20 Commission;

21 (3) Refused to submit to examination under oath, or to permit examination
22 of the credit union's books, papers, records, accounts, and affairs by

1 the Administrator of Credit Unions or his duly authorized
2 representative;

3 (4) Failed or refused to authorize and direct any other person to permit the
4 inspection and examination of the credit union's books, papers,
5 records, or accounts in the other person's care, possession, custody, or
6 control by the Administrator of Credit Unions or a duly authorized
7 representative of the Administrator, after the Administrator has
8 requested the granting of that authority and direction to the other
9 person; or

10 (5) Affected or is likely to affect the safety or soundness of the credit
11 union by conducting the credit union's business in an unauthorized or
12 unlawful manner.

13 (b) If the Administrator of Credit Unions makes any of these findings, he may
14 issue an order temporarily suspending the credit union's operations for not more than 90
15 days or, if the Administrator determines that the findings are of such severity that
16 immediate affirmative action is needed to prevent further dissipation of the assets of the
17 credit union, the Administrator may immediately issue an order of conservation and
18 appoint a conservator to manage the affairs of the credit union. Service of the order of
19 suspension or the order of conservation must be by certified or registered mail,
20 addressed to the credit union at the last known address of its principal office, or by
21 delivery to an officer or director of the credit union. Service by mail is complete upon
22 the deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post
23 office or official depository under the care and custody of the United States Postal
24 Service. The order must clearly state the grounds for suspension or conservation.

25 (c) After a conservation order has been served on the credit union, the
26 Administrator of Credit Unions shall take possession and control of the books, records,
27 property, assets, and business of the credit union. Upon the service of the suspension
28 order, the credit union shall cease all operations, except those authorized by the
29 Administrator and conducted under his supervision. Not later than 15 days after the
30 date an order of suspension or conservation is served, the board of directors shall file a
31 written reply to the order. They may file a written request for a hearing to present to the
32 Administrator a plan to continue operations under the control of the board of directors
33 setting out proposed corrective actions. Under an order of suspension, the board of
34 directors may request that a conservator be appointed for the credit union or that the
35 credit union be closed or merged or that a liquidating agent be appointed, and may
36 waive rights to further appeal. In that event, the Administrator may immediately
37 appoint a conservator, or order that the credit union be liquidated and appoint a
38 liquidating agent. Under an order of conservation, the board of directors may consent to
39 the conservatorship and waive rights to further appeals.

40 (d) If the board of directors files its reply and requests a hearing as provided by
41 subsection (c), the Administrator of Credit Unions shall set and hold the hearing not less
42 than 10 nor more than 30 days after the date of receipt of such a request. Not later than
43 10 days before the hearing, the Administrator shall give notice to the credit union of the
44 date, time, and place of the hearing. Not later than 10 days after the earlier of the date

1 of conclusion of the hearing or the date on which the suspension expires, the
2 Administrator shall (i) adopt the plan to continue operations under the control of the
3 board of directors presented by the credit union, (ii) agree with the credit union on an
4 alternative plan to continue operations under the control of the board of directors or
5 other appropriate measures, (iii) reject the plan to continue operations under the control
6 of the board of directors and issue an order of conservation appointing a conservator,
7 (iv) continue a previous order of conservation, or (v) issue an order of liquidation
8 ordering that the credit union be closed, ordering that its affairs and business be
9 liquidated, and appointing a liquidating agent.

10 (e) If the Administrator of Credit Unions rejects the credit union's plan to
11 continue operations and determines that it is in the public interest and in the best interest
12 of the members, depositors, and creditors of the credit union to rehabilitate the credit
13 union, he may permit the credit union to operate under his direction and control, and
14 shall issue an order of conservation appointing a conservator to manage the affairs of
15 the credit union. The Administrator shall serve the order of conservation in the same
16 manner as provided for service of an order of suspension.

17 (f) The conservator, on behalf and under the supervision and direction of the
18 Administrator of Credit Unions, shall take charge of the books, records, property, assets,
19 and business of the credit union and shall conduct the business and affairs of the credit
20 union under the direction and supervision of the Administrator. The conservator shall
21 take steps toward the removal of the causes and conditions that have necessitated the
22 order that the Administrator directs. During the conservatorship, the conservator shall
23 make reports to the Administrator from time to time as the Administrator requires. The
24 conservator shall take all necessary measures to preserve, protect, and recover the assets
25 or property of the credit union, including claims or causes of action belonging to or that
26 may be asserted by the credit union. In addition, the conservator may deal with that
27 property in his own name as conservator and may file, prosecute, or defend against a
28 suit by or against the credit union if the conservator considers this action necessary to
29 protect the interested parties or property affected by the suit.

30 (g) The Administrator of Credit Unions shall determine the cost incident to the
31 conservatorship. The cost is a charge against the assets and funds of the credit union,
32 and shall be paid as the Administrator directs.

33 (h) A suit filed against a credit union or its conservator while a conservatorship
34 order is in effect must be brought in a court of proper jurisdiction in Wake County. The
35 conservator may file suit in a court of proper jurisdiction in Wake County against any
36 person for the purpose of preserving, protecting, or recovering assets or property of the
37 credit union, including a claim or cause of action belonging to or that may be asserted
38 by the credit union.

39 (i) The conservator shall serve for the period necessary to accomplish the
40 purposes of conservatorship consistent with the intent of this section. If the credit union
41 is rehabilitated, it shall be returned to the management of the board of directors under
42 the terms that are reasonable and necessary to prevent recurrence of the conditions that
43 occasioned the conservatorship.

1 (j) If the Administrator of Credit Unions determines that the credit union in
2 conservatorship is not in a condition to continue business and cannot be rehabilitated as
3 provided by this section, he shall issue, as he deems appropriate, either an order of
4 merger or an order of liquidation, appointing a liquidating agent.

5 (k) If, after a hearing under this section, the board of directors of the credit union
6 is dissatisfied with the decision of the Administrator of Credit Unions, the board may
7 appeal to the Credit Union Commission by filing with the Administrator a written
8 appeal, including a duly certified resolution of the board, not later than 10 days after the
9 day that the Administrator's order is served. If the appeal is duly filed, the
10 Administrator shall set a date for a hearing on the appeal not more than 30 days after the
11 date on which the appeal is filed. The Administrator shall promptly give notice of the
12 date, time, and place of the hearing to the credit union and any other interested party.
13 The filing of an appeal does not suspend the effect of the order of the conservation and
14 this order remains in force pending final disposition of the appeal by the Commission.
15 At the conclusion of the hearing, the Commission may reverse the order of the
16 Administrator and adopt and approve the credit union's plan to continue operations,
17 affirm the Administrator's order of conservation, or order that other appropriate action
18 be taken.

19 (l) If the board of directors of the credit union does not file a reply to the order of
20 suspension or an order of conservation as required by this section or fails to request and
21 appear at the hearing provided for by this section, the Administrator of Credit Unions
22 may dispose of the matter as he considers appropriate. The credit union is presumed to
23 have consented to the action and may not contest it.

24 (m) The period of suspension and the date and time of the hearings provided for
25 by this section may be extended by agreement of the parties and the Administrator of
26 Credit Unions.

27 (n) The Administrator of Credit Unions shall notify the members of the Credit
28 Union Commission of any suspension.

29 ~~(a) If it appears that any credit union is bankrupt or insolvent, or that it has~~
30 ~~willfully violated Articles 14A to 14L of this Chapter, or is operating in an unsafe or~~
31 ~~unsound manner, the Administrator of Credit Unions shall issue an order temporarily~~
32 ~~suspending the credit union's operations for not more than 90 days. The board of~~
33 ~~directors shall be given notice by registered mail of such suspension, which notice shall~~
34 ~~include a list of the reasons for such suspension, and/or a list of the specific violations~~
35 ~~of Articles 14A to 14L of this Chapter. The Administrator of Credit Unions shall also~~
36 ~~notify the members of the Credit Union Commission of any suspension.~~

37 ~~(b) Upon receipt of such suspension notice, the credit union shall cease all~~
38 ~~operations, except those authorized by the Administrator. The board of directors shall~~
39 ~~then file with the Administrator a reply to the suspension notice, and may request a~~
40 ~~hearing to present a plan of corrective actions proposed if it desires to continue~~
41 ~~operations. The board may request that the credit union be declared insolvent and a~~
42 ~~liquidating agent be appointed.~~

43 ~~(c) Upon receipt from the suspended credit union of evidence that the conditions~~
44 ~~causing the order of suspension have been corrected, the Administrator may revoke the~~

1 ~~suspension notice, permit the credit union to resume normal operations, and notify the~~
2 ~~Commission of such action.~~

3 ~~(d) If the Administrator, after issuing notice of suspension and providing an~~
4 ~~opportunity for a hearing, rejects the credit union's plan to continue operations, he may~~
5 ~~appoint an operating officer or trustee to correct the conditions causing the order of~~
6 ~~suspension, or he may issue a notice of involuntary liquidation and appoint a liquidating~~
7 ~~agent. The credit union may request the appropriate court to stay execution of such~~
8 ~~action. Involuntary liquidation may not be ordered prior to the conclusion of suspension~~
9 ~~procedures outlined in this section.~~

10 ~~(e) If, within the suspension period, the credit union fails to answer the~~
11 ~~suspension notice or request a hearing, the Administrator may then revoke the credit~~
12 ~~union's charter, appoint a liquidating agent and liquidate the credit union."~~

13 ~~Sec. 2. This act is effective upon ratification.~~