

HOUSE BILL NO. 550

INTRODUCED BY K. SWANSON

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND UPDATING LAWS RELATED TO CREDIT UNIONS;
5 REQUIRING A SUPERVISORY COMMITTEE; DEFINING TYPES OF "SHARES"; CLARIFYING MERGER
6 REQUIREMENTS; ALLOWING CREDIT UNIONS TO HOLD FUNDS FOR HEALTH SAVINGS ACCOUNTS OR
7 MEDICAL CARE SAVINGS ACCOUNTS; ALLOWING INVESTMENTS IN CERTAIN DERIVATIVE
8 INSTRUMENTS AND DEPOSITS; PROVIDING A TIMEFRAME FOR FILLING VACANCIES ON BOARDS OF
9 DIRECTORS AND REVISING OTHER TIMEFRAMES FOR CONSISTENCY; ALLOWING EMPLOYEES
10 FAVORABLE LOAN RATES; REVISING ACCOUNT VERIFICATION REQUIREMENTS; EXPANDING
11 RULEMAKING AUTHORITY; AMENDING SECTIONS 32-3-102, 32-3-301, 32-3-321, 32-3-322, 32-3-401,
12 32-3-403, 32-3-405, 32-3-406, 32-3-416, 32-3-417, 32-3-418, 32-3-608, AND 32-3-701, MCA; AND REPEALING
13 SECTIONS 32-3-413, 32-3-414, 32-3-415, AND 32-3-601, MCA."
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

17 **Section 1.** Section 32-3-102, MCA, is amended to read:

18 **"32-3-102. ~~Definition and purposes~~ Purposes -- definitions.** (1) ~~A~~ The purposes of a credit union is
19 ~~a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging~~ are to:

20 (a) encourage thrift among its members, ~~creating;~~

21 (b) create a source of credit at a fair and reasonable rate of interest, ~~and providing; and~~

22 (c) provide an opportunity for ~~its~~ the credit union's members to use and control their own money in order

23 to improve their economic and social condition.

24 (2) For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:

25 (a) "Credit union" means a cooperative, nonprofit association incorporated under this chapter for the
26 purposes described in subsection (1).

27 (b) "Immediate family" means a spouse, a child, a sibling, a parent, a grandparent, or a grandchild and
28 includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

29 (c) "Membership shares" means a fee paid to the credit union to be a member. The fee is held by the
30 credit union and may be invested by the credit union. The fee must be set in the bylaws of the credit union.

1 (d) "Official" means a member of the board of directors, supervisory committee, or credit committee of
2 the credit union and includes individuals elected by the board of directors to serve as executive officers described
3 in 32-3-408.

4 (e) "Shares" means a balance of funds, minus membership shares, held by a credit union and
5 established in accordance with standards specified by the credit union. The term includes general references to
6 shares as well as share accounts, share certificates, share draft accounts, custodial accounts, individual
7 retirement accounts, payable on death accounts, trust accounts, money market accounts, share checking
8 accounts, and business share accounts."

9

10 **Section 2.** Section 32-3-301, MCA, is amended to read:

11 **"32-3-301. Organization procedure.** (1) Any seven or more residents of this state who are of legal age
12 and who have a common bond, as described in 32-3-304, may organize a credit union and become charter
13 members of the credit union by complying with this section.

14 (2) The subscribers shall execute, ~~in duplicate~~, articles of incorporation that conform to the applicable
15 Montana corporation law and shall agree to the terms of the articles. The articles must state:

16 (a) the name, which must include the words "credit union" and which must conform with the provisions
17 of 32-3-103, and the location where the proposed credit union is to have its principal place of business;

18 (b) that the existence of the credit union is perpetual;

19 (c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or
20 more than ~~\$25~~ \$50;

21 (d) that the credit union is organized under this chapter for the purposes set forth in the articles;

22 (e) the names and addresses of the subscribers to the articles of incorporation and the value of shares
23 subscribed to by each, which may be not less than \$5; and

24 (f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to
25 carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union
26 as a legal entity.

27 (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union,
28 consistent with this chapter, and ~~execute forward~~ the bylaws in duplicate as provided in subsection (5).

29 (4) The subscribers shall select at least five qualified persons who agree to serve on the board of
30 directors and at least three qualified persons who agree to serve on the supervisory committee ~~if the bylaws~~

1 ~~provide for a supervisory committee.~~ A signed agreement to serve in these capacities until the first annual
 2 meeting or until the election of their successors, whichever is later, must be executed by the parties. This
 3 agreement must be submitted to the department of administration.

4 (5) (a) The subscribers shall forward the articles of incorporation and the bylaws to the department. The
 5 department may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter
 6 and if the department is satisfied that the proposed ~~field of~~ operation is favorable to the success of the credit
 7 union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be
 8 properly administered. The department shall return to the applicants or their representatives a an approved copy
 9 of the bylaws and the articles, which must be preserved in the permanent files of the credit union, or provide a
 10 written reason if the application is denied. ~~The application must be acted upon within 30 days.~~

11 (b) The articles of incorporation must be filed with the secretary of state who, upon payment of the fees
 12 for filing the articles, shall issue a certificate of incorporation.

13 (6) The subscribers for a credit union charter may not transact any business until formal approval of the
 14 charter has been received.

15 (7) If the department denies a certificate of approval, the subscribers may request a hearing under the
 16 Montana Administrative Procedure Act, Title 2, chapter 4."

17
 18 **Section 3.** Section 32-3-321, MCA, is amended to read:

19 **"32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the
 20 manner prescribed in this section.

21 (2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily
 22 and directing that the question of liquidation be submitted to the members.

23 (3) Within ~~40~~ 14 days after the board of directors decides to submit the question of liquidation to the
 24 members, the presiding officer of the board shall notify the department of administration in writing, setting forth
 25 the reasons for the proposed action and a plan for liquidation. Within ~~40~~ 14 days after the members act on the
 26 question of liquidation, the presiding officer of the board shall notify the department in writing as to whether or not
 27 the members approved the proposed liquidation.

28 (4) Depending on the credit union's circumstances, a proposed liquidation plan may or may not require,
 29 for membership shares or any other kinds of shares, ~~the suspension of payment on shares, withdrawal of shares,~~
 30 ~~transfer of shares~~ to loans and interest, investments of any kind, new loans, or other similar financial transactions

1 ~~pending action by members on the proposal to liquidate.~~ On approval ~~by the members~~ of the proposal by the
 2 members, all business transactions must be permanently discontinued. Necessary expenses of operation must
 3 continue to be paid on authorization of the liquidating agent or committee during the period of liquidation.

4 (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or
 5 by a two-thirds majority of the members present at a regular or special meeting of the members is required. If
 6 authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each
 7 member, ~~by first-class mail~~, at least ~~40~~ 14 days prior to the meeting.

8 (6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the
 9 purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as
 10 required by this chapter.

11 (7) A liquidating credit union shall continue in existence for the purpose of discharging its debts,
 12 collecting and distributing its assets, and doing all acts required in order to wind up its business ~~and~~. The
 13 liquidating credit union may sue and be sued for the purpose of enforcing debts and obligations until its affairs
 14 are fully adjusted.

15 (8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of
 16 any disposition of the assets in the sequence described in 32-3-205(6).

17 (9) As soon as the liquidating agent or committee determines that all assets from which there is a
 18 reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the
 19 liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department.
 20 The form, together with all pertinent ~~books and~~ records of the liquidating credit union, must be filed with the
 21 department and the secretary of state. Upon filing with both entities, the credit union is dissolved.

22 (10) If the department determines that the liquidating agent or committee has failed to make reasonable
 23 progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of
 24 this chapter, the department may issue a cease and desist order against the liquidating agent or committee and
 25 appoint a new liquidating agent to complete the liquidation under the department's direction and control. The
 26 department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to
 27 function of the liquidating agent."

28

29 **Section 4.** Section 32-3-322, MCA, is amended to read:

30 "**32-3-322. Merger.** (1) Any credit union may, with the approval of the department of administration,

1 merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed
 2 upon by the majority of ~~each~~ the board of directors of each credit union joining in the merger and approved by
 3 the affirmative vote of a majority of the voting members of the merging credit union ~~present at a meeting of its~~
 4 ~~members called for that purpose.~~

5 (2) After agreement by each board of directors and approval by the members of the merging credit union,
 6 the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of
 7 the following:

- 8 (a) the time and place of the meeting of each board of directors at which the plan was agreed upon;
- 9 (b) the vote in favor of the adoption of the plan;
- 10 (c) a copy of the resolution or other action by which the plan was agreed upon;
- 11 (d) the time and place of the meeting of the members at which the plan agreed upon was approved; and
- 12 (e) the vote by which the plan was approved by the members.

13 (3) The certificate and a copy of the agreed-upon plan of merger ~~agreed upon~~ must be forwarded to the
 14 department, certified by the department, and returned to both credit unions within 30 days. A copy of the
 15 certificate of merger ~~and, the certified plan, and the articles of merger~~ must be filed with the secretary of state by
 16 the surviving credit union.

17 (4) Upon return of the certificate from the department, all property rights and members' interest of the
 18 merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer,
 19 and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the
 20 surviving credit union under whose charter the merger was effected. The rights and privileges of the members
 21 of the merged credit union remain intact.

22 (5) This section must be construed, whenever possible, to permit a credit union chartered under any
 23 other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge
 24 with one chartered under any other law."

25

26 **Section 5.** Section 32-3-401, MCA, is amended to read:

27 "**32-3-401. General powers.** A credit union may:

- 28 (1) make contracts as provided for in this chapter;
- 29 (2) sue and be sued;
- 30 (3) adopt and use a common seal and alter the seal;

- 1 (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its
2 operations;
- 3 (5) at the discretion of the board of directors, require the payment of an entrance fee or annual
4 membership fee, or both, of any person admitted to membership;
- 5 (6) receive savings from its members in the form of shares or special-purpose thrift accounts;
- 6 (7) lend its funds to its members as ~~hereinafter~~ provided in this chapter;
- 7 (8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;
- 8 (9) discount and sell any eligible obligations, subject to rules prescribed by the department of
9 administration;
- 10 (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another
11 credit union, subject to the approval of the department;
- 12 (11) invest surplus funds as provided in this chapter;
- 13 (12) make deposits in legally chartered banks, savings banks, cooperative banks, building and loan
14 associations, savings and loan associations, trust companies, and ~~central-type corporate credit union~~
15 organizations unions;
- 16 (13) assess charges to members in accordance with the bylaws for failure to meet promptly their
17 obligations to the credit union;
- 18 (14) hold membership in other credit unions organized under this chapter or other laws and in other
19 associations and organizations composed of credit unions;
- 20 (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;
- 21 (16) collect, receive, and disburse money in connection with the sale of negotiable checks, money orders,
22 and other money type instruments and for ~~such~~ other purposes ~~as may~~ that provide benefit or convenience to
23 its members and charge a reasonable fee for the services;
- 24 (17) perform tasks and missions that are requested by the federal government or this state or any agency
25 or political subdivision of the federal government or this state, ~~when~~ if approved by the board of directors and if
26 not inconsistent with this chapter;
- 27 (18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the
28 credit union or its membership, subject to regulations prescribed by the department;
- 29 (19) make donations or contributions to any civic, charitable, or community organizations as authorized
30 by the board of directors, subject to regulations prescribed by the department;

1 (20) purchase or make available insurance for its directors, officers, agents, employees, and members;
 2 (21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds
 3 of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other
 4 pension or profit-sharing plan if the funds of the accounts are invested in shares of the credit union;
 5 (22) act as custodian or trustee for medical care savings accounts as provided in 15-61-204 or health
 6 savings accounts if qualified as provided in 26 CFR 1.408-2; or
 7 ~~(22)~~(23) act as fiscal agent for and receive deposits from the federal government, this state, or any
 8 agency or political subdivision of the federal government or this state."

9
 10 **Section 6.** Section 32-3-403, MCA, is amended to read:

11 **"32-3-403. Election or appointment of officials.** (1) The credit union must be directed by a board,
 12 consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and
 13 from the members. All members of the board shall hold office for terms that the bylaws provide.

14 (2) The board of directors shall appoint a supervisory committee of ~~not less than~~ at least three members
 15 at during the organization organizational meeting and. Subsequent appointments must be within 30 days following
 16 after each annual meeting of the members for terms that the bylaws provide. ~~However, the bylaws of the credit~~
 17 ~~union may provide that the supervisory committee members are elected for terms that the bylaws provide by the~~
 18 ~~members of the credit union at the annual meeting of the members or may provide that the credit union may not~~
 19 ~~have a supervisory committee. If the~~ The bylaws may provide that the board of directors of the credit union may
 20 ~~not have a~~ serve as the supervisory committee, ~~the~~ The duties and powers of the supervisory committee, ~~as~~
 21 ~~described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors~~ must be established by the
 22 department of administration by rule.

23 (3) ~~As provided in the bylaws, the board of directors shall appoint or the members shall elect a credit~~
 24 ~~committee, consisting of an odd number of at least three members, for terms that the bylaws provide. In lieu of~~
 25 ~~a credit committee, the bylaws may provide that the board of directors shall appoint a credit manager. The bylaws~~
 26 must provide for either:

27 (a) a credit committee, to be either appointed by the board of directors or elected by the members; or
 28 (b) a credit manager, to be appointed by the board of directors.

29 (4) If the bylaws provide for a credit committee, the committee must consist of an odd number of at least
 30 three members, who shall serve for terms that the bylaws provide. The bylaws must specify the number of

1 members of the credit committee and the number of credit committee members needed for a quorum."

2

3 **Section 7.** Section 32-3-405, MCA, is amended to read:

4 **"32-3-405. Vacancies.** (1) The board of directors shall fill any vacancies occurring in the board within
5 60 days. An individual appointed to fill a vacancy shall serve until successors elected at the next annual meeting
6 have qualified or as provided in the bylaws.

7 (2) The board shall also fill vacancies in the credit and supervisory committees within 60 days or as
8 provided in the bylaws."

9

10 **Section 8.** Section 32-3-406, MCA, is amended to read:

11 **"32-3-406. Compensation of officials.** (1) ~~An officer, director, or committee member~~ official of the
12 credit union, other than the treasurer, ~~a credit manager, or a loan officer~~ an employee, may not be compensated
13 for service in that position, ~~but,~~

14 (2) For the purposes of this section, the following payments are allowed and are not considered
15 compensation:

16 (a) necessary expenses incidental to the performance of official business of the credit union; or

17 (b) reasonable life, health, accident, and similar insurance protection for ~~a director or committee member~~
18 ~~may not be considered compensation. Directors and committee members, while on official business of the credit~~
19 ~~union, may be reimbursed for necessary expenses incidental to the performance of the business~~ an official."

20

21 **Section 9.** Section 32-3-416, MCA, is amended to read:

22 **"32-3-416. Credit committee or credit manager duties.** (1) ~~The~~ A credit union may use a credit
23 ~~committee may be dispensed with and~~ or a credit manager may be empowered to approve or disapprove loans
24 under conditions ~~prescribed by the board of directors~~ prescribes. ~~If the credit committee is dispensed with, the~~
25 ~~procedures prescribed in 32-3-413 through 32-3-415 do not apply and loans may not be made unless approved~~
26 ~~by the credit manager, except~~

27 (2) The credit committee or the credit manager may appoint one or more loan officers with the power
28 to approve loans, subject to limitations or conditions that the ~~credit manager~~ board of directors prescribes. The
29 board of directors shall provide an appeal process for applications rejected by loan officers.

30 (3) If a credit union uses a credit committee, a quorum of the credit committee shall meet as often as

1 required to consider loan applications. A majority of the credit committee members who are present at the
 2 meeting at which an application is considered is required for approval of the application.

3 (4) Credit union policies set by the board of directors may determine the loan size or type of loans that
 4 a credit committee or credit manager may approve."

5
 6 **Section 10.** Section 32-3-417, MCA, is amended to read:

7 **"32-3-417. Audits.** (1) The board of directors or supervisory committee shall make or cause to be made
 8 a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit
 9 to the board of directors and a summary of that report to the members at the next annual meeting of the credit
 10 union. The board or committee shall make or cause to be made any supplementary audits or examinations as
 11 it considers necessary or as are required by the department of administration or by the board of directors and
 12 submit reports of these supplementary audits to the board of directors.

13 (2) The board of directors or supervisory committee shall ~~cause the accounts of the members to be~~
 14 ~~verified with the records of the credit union from time to time and not less frequently than every 2 years~~ verify the
 15 records of the credit union consistent with 12 CFR 715.8 and 12 CFR 741.202."

16
 17 **Section 11.** Section 32-3-418, MCA, is amended to read:

18 **"32-3-418. Suspension and removal of officials.** ~~(1) The supervisory committee by a unanimous vote~~
 19 ~~may suspend any member of the credit committee and shall report the action to the board of directors for~~
 20 ~~appropriate action:~~

21 ~~(2)(1)~~ (1) The supervisory committee by a unanimous vote may suspend any ~~officer or member of the board~~
 22 ~~of directors~~ official until the next ~~members'~~ membership meeting, which must be held not less than 7 or more than
 23 21 days after the suspension. At the meeting, the suspension must be acted upon by the members.

24 ~~(3)(2)~~ (2) Any member of the supervisory committee may be removed by the board of directors for failure
 25 to perform the member's duties in accordance with this chapter, the articles of incorporation, or the bylaws."

26
 27 **Section 12.** Section 32-3-608, MCA, is amended to read:

28 **"32-3-608. Loans to officials.** (1) (a) Except as provided in subsection (1)(b), A a credit union may
 29 make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and
 30 credit committees officials if:

1 ~~(a)(i)~~ the loan complies with the requirements of this chapter with respect to loans to other borrowers
 2 and is not on terms more favorable than those extended to other borrowers; ~~except that employees may receive~~
 3 ~~low-interest or no-interest loans for job-related expenses under an employee assistance program approved by~~
 4 ~~the department of administration; and~~

5 ~~(b)(ii)~~ the loan or aggregate of loans to any one ~~director or committee member~~ official that exceeds
 6 \$20,000 plus pledged shares ~~must be~~ is reported to the board of directors. Loans to ~~directors and committee~~
 7 ~~members~~ officials may not exceed an aggregate of 20% of unimpaired capital of the credit union.

8 (b) Employees other than officials may receive loans more favorable than those extended to other
 9 borrowers, including low-interest or no-interest loans.

10 (2) A credit union may permit directors, ~~employees~~, loan officers, the credit manager, and members of
 11 its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members.
 12 If the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser
 13 exceeds \$20,000, a report to the board of directors is required."

14

15 **Section 13.** Section 32-3-701, MCA, is amended to read:

16 "**32-3-701. Investment of funds -- rulemaking.** (1) Funds not used in loans to members may be
 17 invested in:

18 ~~(4)(a)~~ securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and
 19 interest by the United States of America, or any agency ~~thereof~~ of the United States government, or in any trust
 20 ~~or trusts~~ established for investing directly or collectively in the ~~same~~ United States government;

21 ~~(2)(b)~~ general obligations of any state of the United States, the District of Columbia, the Commonwealth
 22 of Puerto Rico, and the several territories organized by congress, or any political subdivisions ~~thereof~~ of entities
 23 listed in this subsection (1)(b);

24 ~~(3)(c)~~ certificates of deposit or passbook type accounts issued by a state or national bank, mutual
 25 savings bank, building and loan association, or savings and loan association;

26 ~~(4)(d)~~ loans to or in shares or deposits of other credit unions;

27 ~~(5)(e)~~ the capital shares, obligations, or preferred stock issues of any agency or association organized
 28 either as a stock company, mutual association, or membership corporation, provided the membership or
 29 stockholdings, as the case may be, of ~~such~~ the agency or association are primarily confined or restricted to credit
 30 unions or organizations of credit unions and provided the purposes for which ~~such~~ the agency or association is

1 organized are designed primarily to service or otherwise assist credit union operations;

2 ~~(6)(f)~~ shares of a cooperative society organized under the laws of this state or of the laws of the United
3 States in the total amount not exceeding 10% of the shares and surplus of the credit union;

4 ~~(7)(g)~~ loans to any credit union association or corporation, national or state, of which the credit union is
5 a member, except that ~~such~~ the investments shall authorized under this subsection (1)(g) must be limited to 2%
6 of the assets of the credit union.

7 (2) A credit union may purchase, sell, underwrite, and hold other investment securities that are
8 obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. In
9 addition, unless limited by the department by rule, a credit union may purchase, sell, underwrite, and hold those
10 investment securities that are derivative transactions that federal credit unions are expressly authorized to
11 purchase, sell, underwrite, and hold.

12 (3) The department shall adopt rules to implement this section."
13

14 NEW SECTION. Section 14. Repealer. The following sections of the Montana Code Annotated are
15 repealed:

- 16 32-3-413. Authority of credit committee.
- 17 32-3-414. Meeting of credit committee -- loan approval.
- 18 32-3-415. Loan officers.
- 19 32-3-601. Loans -- purposes, terms, and conditions.

20 - END -