

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 473, As Amended

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO CREDIT UNION ACT; AMENDING SECTION 26-2136, IDAHO
2 CODE, TO REMOVE PROVISIONS REGARDING EXAMINATIONS; AMENDING CHAPTER
3 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2136A,
4 IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO CONDUCT CERTAIN EXAMINATIONS
5 AND INVESTIGATIONS, TO PROVIDE FOR REPORTING REQUIREMENTS, AND TO
6 PROVIDE CERTAIN CRITERIA FOR AN EXAMINATION OR INVESTIGATION; AMEND-
7 ING CHAPTER 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
8 26-2136B, IDAHO CODE, TO PROVIDE THAT CERTAIN INFORMATION SHALL BE
9 CONFIDENTIAL, TO PROVIDE EXCEPTIONS, TO PROVIDE FOR REPORTS AND IN-
10 FORMATION IN CIVIL ACTIONS, AND TO PROVIDE A PENALTY; AMENDING CHAPTER
11 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2136C,
12 IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF FINANCE AND ITS EMPLOY-
13 EES SHALL NOT DISCLOSE CERTAIN INFORMATION AND TO PROVIDE A PENALTY;
14 AMENDING SECTION 26-2140, IDAHO CODE, TO REVISE PROVISIONS REGARDING A
15 CEASE AND DESIST ORDER, TO PROVIDE FOR A CIVIL MONEY PENALTY IN CERTAIN
16 INSTANCES, TO PROVIDE FOR CERTAIN CRITERIA IN DETERMINING THE AMOUNT
17 OF A CIVIL MONEY PENALTY, TO PROVIDE THAT A HEARING MAY BE CLOSED IN
18 CERTAIN INSTANCES, TO PROVIDE FOR A VIOLATION, AND TO PROVIDE THAT THE
19 DIRECTOR MAY MODIFY AN ORDER; AMENDING SECTION 26-2140A, IDAHO CODE,
20 TO PROVIDE FOR A CREDIT UNION PLACED IN RECEIVERSHIP AND TO MAKE TECH-
21 NICAL CORRECTIONS; REPEALING SECTION 26-2140B, IDAHO CODE, RELATING TO
22 THE REMOVAL OF DIRECTORS, OFFICERS, OR EMPLOYEES; AMENDING CHAPTER 21,
23 TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2140B, IDAHO
24 CODE, TO PROVIDE FOR THE SUSPENSION OR REMOVAL OF A DIRECTOR, SUPERVI-
25 SORY COMMITTEE MEMBER, OFFICER, OR EMPLOYEE IN CERTAIN INSTANCES, TO
26 PROHIBIT EMPLOYMENT IN CERTAIN INSTANCES, TO PROVIDE FOR A PETITION TO
27 DISTRICT COURT IN CERTAIN INSTANCES, TO PROVIDE CERTAIN REQUIREMENTS
28 FOR AN ORDER ISSUED, AND TO PROVIDE FOR ATTORNEY'S FEES AND COSTS IN
29 CERTAIN INSTANCES; REPEALING SECTION 26-2141, IDAHO CODE, RELATING TO
30 SUSPENSION OF A CREDIT UNION; AMENDING CHAPTER 21, TITLE 26, IDAHO CODE,
31 BY THE ADDITION OF A NEW SECTION 26-2141, IDAHO CODE, TO PROVIDE FOR
32 THE APPOINTMENT OF A RECEIVER IN CERTAIN INSTANCES, TO PROVIDE CERTAIN
33 REQUIREMENTS FOR A RECEIVER, AND TO DEFINE A TERM; AMENDING CHAPTER 21,
34 TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2141A, IDAHO
35 CODE, TO PROVIDE FOR CERTAIN POWERS AND DUTIES FOR A RECEIVER; AMENDING
36 SECTION 26-2142, IDAHO CODE, TO REMOVE A PROVISION REGARDING LIQUIDA-
37 TION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-2151, IDAHO
38 CODE, TO PROVIDE FOR CUSTODIAL ACCOUNTS IN CERTAIN INSTANCES; AMEND-
39 ING CHAPTER 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
40 26-2157, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO CALL AND ATTEND A
41 SPECIAL MEETING OF THE BOARD IN CERTAIN INSTANCES; AND AMENDING SECTION
42 26-2185, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
43

44 Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-2136, Idaho Code, be, and the same is hereby amended to read as follows:

26-2136. ~~EXAMINATIONS AND FEES. The department of finance shall examine each credit union no less often than once in eighteen (18) months, and more frequently whenever the director shall deem it necessary. Each credit union and all of its officers and agents shall be required to give to representatives of said department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of such examination, said representatives shall have power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.~~

~~A report of such examination shall be forwarded to the president of each credit union within thirty (30) days after the completion of the examination. Within thirty (30) days after the receipt of such report, a general meeting of the directors and committeemen shall be called to consider matters contained in the report. A reply to the director shall be forwarded by the board within fifteen (15) days.~~

(1) On or before February 15 of each calendar year, the director shall fix and collect from each credit union an assessment fee based upon the total assets of the credit union as of December 31 of the previous calendar year, which fees shall not exceed the amounts set forth in the following schedule:

| TOTAL ASSETS | FEE |
|-------------------------------|--|
| \$50,000 or less | \$50.00 + \$1.00 per thousand dollars of assets |
| Over \$50,000 and not over | |
| \$100,000 | \$100.00 + \$.99 per thousand dollars of assets in excess of \$50,000 |
| Over \$100,000 and not over | |
| \$250,000 | \$149.00 + \$.94 per thousand dollars of assets in excess of \$100,000 |
| Over \$250,000 and not over | |
| \$1 million | \$291.00 + \$.89 per thousand dollars of assets in excess of \$250,000 |
| Over \$1 million and not over | |
| \$2 million | \$958.00 + \$.80 per thousand dollars of assets in excess of \$1 million |
| Over \$2 million and not over | |
| \$5 million | \$1,758.00 + \$.61 per thousand dollars of assets in excess of \$2 million |
| Over \$5 million and not over | |
| \$8 million | \$3,588.00 + \$.48 per thousand dollars of assets in excess of \$5 million |

| 1 | TOTAL ASSETS | FEE |
|---|------------------------|---|
| 2 | Over \$8 million | \$5,028.00 + \$.35 per thousand dollars |
| 3 | | of assets in excess of \$8 million |

4 ~~The director may in his discretion at any time accept in lieu of any por-~~
5 ~~tion of his examinations the findings or result of an audit by a firm of in-~~
6 ~~dependent certified public accountants or other qualified person or firm ap-~~
7 ~~proved by the director. The cost of the audit shall be borne by the credit~~
8 ~~union.~~

9 (2) All fees, fines, examination and miscellaneous charges collected
10 by the director pursuant to the Idaho credit union act shall be deposited
11 into the finance administrative account pursuant to section 67-2702, Idaho
12 Code.

13 SECTION 2. That Chapter 21, Title 26, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 26-2136A, Idaho Code, and to read as follows:

16 26-2136A. EXAMINATIONS AND INVESTIGATIONS REPORTS -- ACCESS TO
17 RECORDS -- OATHS -- SUBPOENAS. (1) The director shall examine each credit
18 union at least once every eighteen (18) months, unless the director de-
19 termines with respect to a credit union that a less frequent examination
20 schedule will satisfactorily protect the financial stability of the credit
21 union and will satisfactorily assure compliance with the provisions of this
22 chapter. The director shall examine a credit union more frequently whenever
23 the director shall deem it necessary.

24 (2) A report of examination conducted pursuant to subsection (1) of
25 this section shall be forwarded to the chairman of the board of directors and
26 the president or chief executive officer after the completion of the exami-
27 nation. The report shall be considered at the first meeting of the board of
28 directors following its receipt. A reply to the director of finance shall be
29 forwarded by the board of directors within fifteen (15) days of the meeting.

30 (3) Each credit union, including out-of-state and foreign credit
31 unions permitted to operate in Idaho, and all of its officers and agents
32 shall be required to give to representatives of the department of finance
33 full access to review all books, papers, files, records, and other sources
34 of information under their control, and retain copies of the same, and full
35 access to personnel.

36 (4) Upon examination or investigation of a credit union, the director:

37 (a) May appraise and revalue the credit union's investments; and

38 (b) May require the credit union to charge off or set up a special re-
39 serve for loans and investments and other assets.

40 (5) The director may make an examination and investigation into the af-
41 fairs of:

42 (a) An out-of-state or foreign credit union permitted to operate in
43 Idaho;

44 (b) A nonpublicly held organization, or its subsidiary, in which a
45 credit union has a material investment;

46 (c) A publicly held organization in which the capital stock or equity is
47 controlled by a credit union;

1 (d) A credit union service organization, or any subsidiary of a credit
2 union service organization, in which a credit union has an interest;

3 (e) An organization that is not a credit union, out-of-state credit
4 union, federal credit union, or foreign credit union and that has a ma-
5 jority interest in a credit union service organization in which a credit
6 union has an interest;

7 (f) A sole proprietorship or organization primarily in the business of
8 managing one (1) or more credit unions;

9 (g) A person or business providing any of the following services to a
10 credit union or to a credit union service organization:

11 (i) Data processing services;

12 (ii) Activities that support financial services, including but
13 not limited to lending funds transfer, fiduciary activities,
14 trading activities, and deposit-taking; and

15 (iii) Internet-related services, including but not limited to web
16 services and electronic bill payments, mobile applications, sys-
17 tem and software development and maintenance, and security moni-
18 toring; or

19 (h) A corporation or other business entity that provides alternative
20 share insurance in accordance with section 26-2153, Idaho Code.

21 The director shall have full access to all books, papers, files, records,
22 personnel, and other sources of information under the control of persons de-
23 scribed in this subsection.

24 (6) In connection with examinations and investigations, the director
25 may:

26 (a) Administer oaths and examine under oath any person concerning the
27 affairs of any credit union or of any person described in subsection (5)
28 of this section; and

29 (b) Issue subpoenas to and require the attendance and testimony of any
30 person at any place within this state and require witnesses to produce
31 books, papers, files, records, and other sources of information.

32 (7) The director may accept in lieu of an examination under this sec-
33 tion:

34 (a) The report of an examiner authorized to examine a credit union or an
35 out-of-state, federal, or foreign credit union or other financial in-
36 stitution; or

37 (b) The report of an accountant, satisfactory to the director, who has
38 made and submitted a report of the condition of the affairs of a credit
39 union or an out-of-state, federal, or foreign credit union or other fi-
40 nancial institution. The director may accept all or part of such a re-
41 port in lieu of all or part of an examination. The accepted report or ac-
42 cepted part of the report has the same force and effect as an examination
43 under this section.

44 SECTION 3. That Chapter 21, Title 26, Idaho Code, be, and the same is
45 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
46 ignated as Section 26-2136B, Idaho Code, and to read as follows:

47 26-2136B. EXAMINATION REPORTS AND SPECIFIED OTHER INFORMATION CONFIDEN-
48 TIAL -- EXCEPTIONS -- PENALTY. (1) The following shall be confidential
49 and privileged and not subject to public disclosure under chapter 1, title

1 74, Idaho Code, and shall be subject to the provisions of section 26-1111,
2 Idaho Code:

3 (a) Examination reports and information obtained by the department of
4 finance in conducting examinations and investigations under this chap-
5 ter;

6 (b) All written communications between the department of finance and
7 any credit union that relate in any manner to the examination or condi-
8 tion of the credit union;

9 (c) Examination reports and related information from other financial
10 institution regulators obtained by the department of finance;

11 (d) Reports or parts of reports accepted in lieu of an examination under
12 section 26-2136A, Idaho Code; and

13 (e) Business plans and other proprietary information obtained by the
14 department of finance in connection with a credit union's application
15 or notice to the department.

16 (2) (a) The director, any federal or other financial institution regu-
17 latory or supervisory agency, a private insurer authorized pursuant to
18 section 26-2153, Idaho Code, and any credit union incorporated or char-
19 tered under title 26, Idaho Code, or under federal law or the law of any
20 state and doing business in the state of Idaho shall each have a privi-
21 lege to refuse to disclose and to prevent any other person from disclos-
22 ing confidential communications, and the contents of any documents re-
23 lating to any confidential communications, between the credit union and
24 the department of finance or federal financial institution regulatory
25 or supervisory agency or private insurer made during the regulatory re-
26 lationship.

27 (b) A communication is confidential if it is made during the regulatory
28 relationship between the department of finance or the federal financial
29 institution regulatory or supervisory agency or private insurer and any
30 such credit union, and if the communication is not designed or intended
31 for disclosure to any other parties.

32 (c) The privilege may be claimed by the credit union or by the depart-
33 ment of finance or the federal financial institution regulatory or
34 supervisory agency, or by the lawyer for either. The privilege may be
35 waived only in accordance with this section and section 26-1111, Idaho
36 Code.

37 (d) The director or the appropriate officer or employee of the federal
38 financial institution regulatory or supervisory agency or private in-
39 surer may disclose confidential communications between the department
40 of finance or agency or private insurer and credit union to the court, in
41 camera, in a civil action. Such disclosure shall also be a privileged
42 communication and the privilege may be claimed by the director, offi-
43 cer, or employee, or his lawyer.

44 (e) No sanction may be imposed upon any credit union as a result of the
45 claim of a privilege by the credit union or the director or the officer
46 or employee of the federal supervisory agency under this section.

47 (3) Notwithstanding subsection (1) of this section, the director may
48 furnish examination reports, work papers, final orders, or other informa-
49 tion obtained in the conduct of an examination or investigation prepared by
50 the director to:

1 (a) Federal agencies empowered to examine credit unions or other finan-
2 cial institutions;

3 (b) Officials empowered to investigate criminal charges. The direc-
4 tor may furnish only that part of the report that is necessary and perti-
5 nent to the investigation, and only after notifying the affected credit
6 union and members of the credit union who are named in that part of the
7 examination report, or other person examined, that the report is being
8 furnished to the officials, unless the officials requesting the report
9 obtain a waiver of the notice requirement for good cause from a court of
10 competent jurisdiction;

11 (c) The examined credit union or other person examined, solely for its
12 confidential use or for the confidential use of the credit union's at-
13 torney, auditor, accountant, independent attorney, independent audi-
14 tor, or independent accountant;

15 (d) The attorney general in his role as legal advisor to the director;

16 (e) Prospective merger partners or conservators, receivers, or liqui-
17 dating agents of a troubled credit union;

18 (f) Credit union regulators in other states or foreign jurisdictions
19 regarding an out-of-state or foreign credit union conducting business
20 in this state under this chapter, or regarding a credit union conducting
21 business in the other state or jurisdiction;

22 (g) A person officially connected with the credit union or other person
23 examined, as officer, director, supervisory committee member, attor-
24 ney, auditor, accountant, independent attorney, independent auditor,
25 or independent accountant;

26 (h) Organizations that have bonded the credit union to the extent that
27 information is relevant to the renewal of the bond coverage or to a claim
28 under the bond coverage;

29 (i) Organizations insuring or guaranteeing the shares of, or deposits
30 in, the credit union;

31 (j) The federal home loan bank of which the credit union is a member or
32 to which the credit union has applied for membership; or

33 (k) Other persons as the director may determine necessary to protect
34 the public interest and confidence.

35 (4) Examination reports, work papers, temporary and final orders,
36 consent orders, other information obtained in the conduct of an examination
37 or investigation furnished under subsection (3) of this section, and all
38 written communication between the department of finance and any credit union
39 that relate in any manner to the condition of the credit union remain the
40 property of the director and, if acquired by any person, shall be returned
41 to the department of finance upon written demand. No person to whom reports
42 are furnished or any officer, director, or employee thereof may disclose or
43 make public the reports or information contained in the reports except in
44 published statistical information that does not disclose the affairs of a
45 person, except that nothing prevents the use in a criminal prosecution of
46 reports furnished under subsection (3) (b) of this section.

47 (5) In a civil action in which the reports or information are sought to
48 be discovered or used as evidence, they may be disclosed only in accordance
49 with subsection (2) of this section and section 26-1111, Idaho Code. After
50 in-camera review of the reports or information in accordance with subsection

1 (2) of this section and section 26-1111 (3) (d), Idaho Code, the court may per-
 2 mit discovery and introduction of only those portions of the report or infor-
 3 mation that are relevant and otherwise unobtainable by the requesting party.
 4 To the extent the court permits discovery and introduction of relevant por-
 5 tions of the report or information, the court shall attach any limitations
 6 and restrictions necessary to ensure that the portions of the report or in-
 7 formation discovered and introduced shall not be disclosed to the public.
 8 This subsection does not apply to an action brought or defended by the direc-
 9 tor.

10 (6) Any person who knowingly violates a provision of this section shall
 11 be guilty of a misdemeanor.

12 SECTION 4. That Chapter 21, Title 26, Idaho Code, be, and the same is
 13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 14 ignated as Section 26-2136C, Idaho Code, and to read as follows:

15 26-2136C. DISCLOSURE OF CONFIDENTIAL INFORMATION BY THE DEPARTMENT --
 16 PENALTY. (1) The department of finance, its director, employees, and former
 17 employees shall not disclose to any person or agency any fact or information
 18 obtained in the course of business of the department under this chapter, ex-
 19 cept in the course of their official duties for the department and in the fol-
 20 lowing cases:

21 (a) When, by the provisions of this chapter or chapter 1, title 74,
 22 Idaho Code, it is made the duty of the department to make public records
 23 and publish the same;

24 (b) When the department is required by law to take special action re-
 25 garding the affairs of any credit union;

26 (c) When called as a witness in any criminal proceeding in a court of
 27 competent jurisdiction, provided that the court must review such in-
 28 formation in chambers to determine the necessity of disclosing such in-
 29 formation, and subject to the privilege provided by sections 26-1111 (3)
 30 and 26-2136B, Idaho Code;

31 (d) When, in the case of a problem credit union, it is necessary or ad-
 32 visable, in the discretion of the director, for the good of the public or
 33 of the depositors; or

34 (e) When, in the discretion of the department, it is advisable to dis-
 35 close any such information to a state or federal credit union supervi-
 36 sory agency.

37 (2) Any person who violates the provisions of this section shall be
 38 guilty of a felony, and conviction shall subject the offender to a forfeiture
 39 of his office or employment.

40 SECTION 5. That Section 26-2140, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 26-2140. CEASE AND DESIST ORDER -- PENALTY. (1) Whenever it appears to
 43 If the director that it is in the public interest, he may order a certificate
 44 holder under finds that any credit union has engaged in an unsafe or unsound
 45 practice in conducting the business of such credit union, or any person has
 46 violated any provision of this chapter, any rule or order issued under this
 47 chapter, any condition imposed in writing by the director, or any written

1 agreement entered into with the director, the director may order the credit
 2 union or other person to cease and desist from ~~acts, practices and omissions~~
 3 ~~which constitute a any such violation of this chapter, or would, in the opin-~~
 4 ~~ion of the director, constitute an unsafe or unsound practice. Such order~~
 5 ~~shall be issued pursuant to chapter 52, title 67, Idaho Code.~~

6 (2) After providing a notice and an opportunity for a public hearing
 7 pursuant to chapter 52, title 67, Idaho Code, the director may assess against
 8 and collect a civil money penalty from any credit union or from any direc-
 9 tor, officer, supervisory committee member, employee, agent, or other per-
 10 son participating in the conduct of the affairs of such credit union who:

11 (a) Engages or participates in any unsafe or unsound practice in con-
 12 nection with a credit union; or

13 (b) Violates or knowingly permits any person to violate any of the pro-
 14 visions of this chapter, any rule promulgated pursuant to this chapter,
 15 or any lawful order of the director issued pursuant to this chapter.

16 (3) A civil money penalty assessed pursuant to subsection (2) of this
 17 section shall not exceed one thousand dollars (\$1,000) per day for each day
 18 such violation continues. No civil money penalty shall be assessed for the
 19 same act or practice if another government agency has taken similar action
 20 against the credit union or person to be assessed such civil money penalty.
 21 In determining the amount of the civil money penalty to be assessed, the di-
 22 rector of the department of finance shall consider:

23 (a) The good faith of the credit union or person to be assessed with such
 24 civil money penalty;

25 (b) The gravity of the violation;

26 (c) Any previous violations by the credit union or person to be assessed
 27 with such civil money penalty;

28 (d) The nature and extent of any previous violations; and

29 (e) Such other matters as the director may deem appropriate.

30 (4) Upon waiver by the respondent of the right to a public hearing
 31 concerning an assessment of a civil money penalty, the hearing or portions
 32 thereof may be closed to the public when concerns arise about prompt with-
 33 drawal of moneys from or the safety and soundness of the credit union.

34 (5) For the purposes of this section, a violation shall include but is
 35 not limited to any action by any person alone or with another person that
 36 causes, brings about, or results in the participation in, counseling of, or
 37 aiding or abetting of a violation.

38 (6) The director may modify or set aside any order assessing a civil
 39 money penalty.

40 SECTION 6. That Section 26-2140A, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 26-2140A. CONSERVATORSHIP. (a~~1~~) The director may, in his discretion
 43 and without notice, appoint himself or an agent as conservator and immedi-
 44 ately take possession and control of the business and assets of any credit
 45 union in any case in which:

46 (1~~a~~) The director determines that such action is necessary to conserve
 47 the assets of any credit union or to protect the interests of the members
 48 of such credit union;

1 (2b) The credit union, by a resolution of its board of directors, con-
2 sents to such an action by the director;

3 (3c) There is a violation of a cease and desist order, or any law, rule,
4 regulation or any written agreement entered into with the director; or

5 (4d) There is concealment of books, papers, records, or assets of the
6 credit union or refusal to submit books, papers, records, or affairs of
7 the credit union for inspection to any examiner or to any lawful agent of
8 the director.

9 (b2) Not later than thirty (30) calendar days after the date on which
10 the director takes possession and control of the business and assets of a
11 credit union, such credit union may apply to the district court for the ju-
12 dicial district in which the credit union is located for an order requiring
13 the director to show cause why he should not be enjoined from continuing such
14 possession and control. Except as provided in this subsection, no court may
15 take any action, except at the request of the director, to restrain or affect
16 the exercise of powers or functions of the director as conservator.

17 (e3) The director may maintain possession and control of the business
18 and assets of such credit union and may operate such credit union until such
19 time as:

20 (1a) The director shall permit such credit union to continue business
21 subject to such terms and conditions as may be imposed by the director;

22 (2b) Such credit union is ~~liquidated~~ placed in receivership in accor-
23 dance with the provisions of section 26-2141, Idaho Code; or

24 (3c) Otherwise ordered by the district court of the judicial district
25 in which the credit union is located.

26 (d4) The director may appoint such agents as he considers necessary in
27 order to carry out his duties as conservator.

28 (e5) All expenses of the credit union during the period of the conserva-
29 torship shall be paid by the credit union.

30 (f6) The conservator shall have all the powers of the members, the di-
31 rectors, the officers, and the committees of the credit union and shall be
32 authorized to operate the credit union in its own name or to conserve its as-
33 sets in the manner and to the extent authorized by the director.

34 (g7) The authority granted in this section is in addition to all other
35 authority granted to the director under this chapter.

36 SECTION 7. That Section 26-2140B, Idaho Code, be, and the same is hereby
37 repealed.

38 SECTION 8. That Chapter 21, Title 26, Idaho Code, be, and the same is
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
40 ignated as Section 26-2140B, Idaho Code, and to read as follows:

41 26-2140B. SUSPENSION OR REMOVAL OF DIRECTORS, SUPERVISORY COMMITTEE
42 MEMBERS, OFFICERS, OR EMPLOYEES -- PROHIBITION OF FUTURE EMPLOYMENT. (1) The
43 director may issue a written order, pursuant to chapter 52, title 67, Idaho
44 Code, suspending or removing a credit union director, supervisory commit-
45 tee member, officer, or employee upon finding that the director, supervisory
46 committee member, officer, or employee has:

47 (a) Been dishonest or reckless in the performance of his official du-
48 ties;

1 (b) Breached his fiduciary duties to the credit union in a manner that
2 is likely to cause substantial loss or seriously weaken the credit
3 union;

4 (c) Violated any provision of this chapter, any state or federal law or
5 regulation pertaining to the business of the credit union, or any order
6 of the director;

7 (d) Been convicted of a felony or any misdemeanor involving theft or
8 dishonesty; or

9 (e) Engaged or participated in any unsafe or unsound practice in the
10 conduct of the affairs of the credit union.

11 (2) In the event a director, supervisory committee member, officer, or
12 employee has been removed from office as set forth in this section, and the
13 order has not been modified, rescinded, or set aside, or if a person has been
14 removed as a director, supervisory committee member, officer, or employee of
15 a credit union by a federal financial institution regulator or a financial
16 institution regulator in another state, the person is prohibited from becom-
17 ing employed by a credit union supervised by the director in this state, ex-
18 cept as specifically permitted by the director.

19 (3) The director, officer, employee, or credit union affected by order
20 of the director may immediately petition the district court in the judicial
21 district of the county in which the credit union has its principal place of
22 business or in Ada county to set aside the order of the director. Upon the
23 filing of such petition, the court shall have the jurisdiction to affirm or
24 set aside in whole or in part and remand to the director.

25 (4) An order issued under this section must contain a statement of the
26 facts that constitute grounds for removal or prohibition and cite relevant
27 state or federal law or regulation.

28 (5) A prevailing party in any proceeding under this section may be
29 awarded attorney's fees and costs pursuant to section 12-117, Idaho Code.

30 SECTION 9. That Section [26-2141](#), Idaho Code, be, and the same is hereby
31 repealed.

32 SECTION 10. That Chapter 21, Title 26, Idaho Code, be, and the same is
33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
34 ignated as Section 26-2141, Idaho Code, and to read as follows:

35 26-2141. APPOINTMENT OF RECEIVER -- CONDITIONS -- PROCEEDING -- BOND
36 -- REPORTING SCHEDULE -- SUBROGATION OF FEDERAL AGENCY TO RIGHTS OF DEPOSIT
37 OWNERS. (1) If a credit union refuses to pay its shares, deposits, or obli-
38 gations in accordance with the terms under which the shares were received or
39 the deposits or obligations were incurred, becomes insolvent, or refuses to
40 submit its books, papers, and records for inspection by the director, or if
41 it appears to the director that the credit union is in an unsafe and unsound
42 condition, the director may apply to the district court for Ada county or for
43 the county in which the principal place of business of the credit union is lo-
44 cated for appointment of a receiver for the credit union.

45 (2) In a proceeding for the appointment of a receiver, the court may act
46 upon the application immediately and without notice to any person. If at
47 any time it appears to the court that the asserted reasons for receivership

1 may not exist, the court shall order the director to show cause as to why the
2 court should not dissolve the receivership.

3 (3) An insuring federal agency or private share insurer may act as re-
4 ceiver without bond. All other receivers, with the exception of an employee
5 of the Idaho department of finance appointed as receiver in his official ca-
6 pacity, shall post a bond in an amount determined by the court.

7 (4) A receiver shall report to the director regarding all matters in-
8 volving the receivership on a schedule established by the director.

9 (5) If a credit union is closed and placed in receivership, and the
10 insuring federal agency or private share insurer pays or makes available
11 for payment the insured shares and deposit liabilities of the closed credit
12 union, the federal agency or private share insurer, whether or not it has
13 become receiver of the credit union, is subrogated to all of the rights of the
14 owners of the deposits against the closed credit union in the same manner and
15 to the same extent as subrogation of the federal agency or private share in-
16 surer under the laws governing the federal agency or private share insurer.

17 (6) For purposes of this section, "insolvent" means a credit union that
18 meets either of the following:

19 (a) It is not able to pay its debts and other obligations, including
20 those related to member shares, as they become due; or

21 (b) Its liabilities exceed its assets.

22 (7) If a federal agency is appointed as receiver of a credit union, the
23 receivership procedures of the federal agency shall govern the receiver-
24 ship.

25 SECTION 11. That Chapter 21, Title 26, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 26-2141A, Idaho Code, and to read as follows:

28 26-2141A. RECEIVER -- DUTIES -- POWERS. (1) A receiver appointed pur-
29 suant to section 26-2141, Idaho Code, shall do all of the following:

30 (a) Take possession of the books, records, and assets of the credit
31 union and collect all debts, dues, and claims belonging to the credit
32 union;

33 (b) Sue and defend, compromise, and settle all claims involving the
34 credit union;

35 (c) Sell all real and personal property of the credit union;

36 (d) Exercise all fiduciary functions of the credit union as of the date
37 of the commencement of the receivership;

38 (e) Pay all administrative expenses of the receivership. The adminis-
39 trative expenses are a first charge on the assets of the credit union and
40 the receiver shall pay those expenses before any final distribution or
41 payment of dividends to creditors or members;

42 (f) Except as provided in this subsection, pay ratably the debts of the
43 credit union. The receiver may not pay any debt that does not exceed one
44 thousand dollars (\$1,000) in full, but the holder of that debt is not en-
45 titled to payment of interest on the debt;

46 (g) After paying or providing for payment of all the administrative ex-
47 penses and debts under subsections (e) and (f) of this section, pay rat-
48 ably to the members of the credit union the balance of the net assets of

1 the credit union in proportion to the number of shares held and owned by
2 each;

3 (h) Have all the powers of the directors, officers, and members of
4 the credit union necessary to support an action taken on behalf of the
5 credit union; and

6 (i) Hold title to the credit union's property, contracts, and rights of
7 action, beginning on the date the credit union is ordered into receiver-
8 ship.

9 (2) A receiver appointed pursuant to section 26-2141, Idaho Code, may
10 do all of the following:

11 (a) Borrow money as necessary or expedient to aid in the liquidation of
12 the credit union and secure the borrowing by the pledge of a lien, secu-
13 rity interest, or mortgage on the assets of the credit union;

14 (b) Employ agents, legal counsel, accountants, appraisers, consul-
15 tants, and other personnel the receiver considers necessary to assist
16 in the performance of the receiver's duties. With the prior approval of
17 the district court, the receiver may employ personnel of the department
18 of finance if the receiver considers the employment to be advantageous
19 or desirable. The expense of employing personnel of the department of
20 finance is an administrative expense of the liquidation that is payable
21 to the department of finance;

22 (c) If approved by the district court, dispose of records of a credit
23 union that are obsolete and unnecessary to administer the receivership
24 or retain records, as necessary, through the termination of the re-
25 ceivership or for any period following the receivership as the receiver
26 may find necessary or appropriate. In such case, a receiver may pre-
27 serve assets of a liquidated credit union and deposit them in an account
28 to be used to maintain the records of a liquidated credit union after the
29 closing of the receivership; and

30 (d) Exercise other powers and duties ordered by the district court un-
31 der the laws of this state applicable to the appointment of a receiver.

32 SECTION 12. That Section 26-2142, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 26-2142. VOLUNTARY AND/OR INVOLUNTARY LIQUIDATION. (~~a~~1) A credit
35 union may elect to dissolve voluntarily and wind up its affairs in the fol-
36 lowing manner: The board shall adopt a resolution recommending that the
37 credit union be dissolved voluntarily and directing that the question of
38 dissolution be submitted to a regular or special meeting of the members.
39 After the adoption of the resolution to voluntarily dissolve, no receipts
40 shall be accepted nor withdrawals permitted from its share or deposit ac-
41 counts, nor shall any loans be made nor any dividends declared nor paid
42 pending final determination by its membership on the voluntary dissolution.
43 At a meeting ~~especially~~ specially called to consider the matter, a majority
44 of the entire membership may vote to dissolve the credit union, provided a
45 copy was mailed to the members of the credit union at least ten (10) days
46 prior thereto. Any member not present at such meeting may, within the next
47 twenty (20) days, vote in favor of or may oppose dissolution by signing a
48 statement in form approved by the department of finance and such vote shall
49 have the force and effect as if cast at such meeting. The credit union shall

1 thereupon immediately cease to do business except for the purposes of liqui-
 2 dation, and the president and secretary shall within five (5) days following
 3 such meeting notify the department of finance of intention to liquidate and
 4 shall include a list of the names of the directors and officers of the credit
 5 union together with their addresses.

6 (~~b~~2) If the department of finance, after issuing notice of suspension
 7 and providing opportunity for a hearing, rejects the credit union's plan to
 8 continue operations, the department of finance may issue a notice of invol-
 9 untary liquidation and appoint a liquidating agent. The credit union may
 10 request a stay of execution of such action by appealing to the appropriate
 11 court of the jurisdiction in which the credit union is located. Involuntary
 12 liquidation may not be ordered prior to following the suspension procedures
 13 outlined in this chapter.

14 (~~e~~3) The credit union shall continue in existence for the purpose of
 15 discharging its debts, collecting and distributing its assets, and doing all
 16 acts required in order to wind up its business, and may sue and be sued for the
 17 purpose of enforcing such debts and obligations until its affairs are fully
 18 adjusted. The board, or, in the case of involuntary dissolution, the liq-
 19 uidating agent, shall apply and distribute the assets of the credit union or
 20 the proceeds from any disposition of the assets of the credit union in the
 21 following sequence:

22 (~~1~~a) ~~s~~Secured creditors, up to the value of their collateral;

23 (~~2~~b) ~~e~~Costs and expenses of liquidation, including a surety bond that
 24 shall be required;

25 (~~3~~c) ~~w~~Wages due the employees of the credit union;

26 (~~4~~d) ~~e~~Costs and expenses incurred by creditors in successfully oppos-
 27 ing the release of the credit union from certain debts as allowed by the
 28 department of finance;

29 (~~5~~e) ~~t~~Taxes owed to the United States or any other governmental unit;

30 (~~6~~f) ~~d~~Debts owed to the United States;

31 (~~7~~g) ~~g~~General creditors; secured creditors, to the extent their
 32 claims exceed the value of their collateral; and owners of deposit ac-
 33 counts, to the extent such accounts are uninsured; and

34 (~~8~~h) ~~m~~Members, to the extent of uninsured share accounts and the organ-
 35 ization that insured the accounts of the credit union.

36 As soon as the board or the liquidating agent determines that all assets
 37 from which there is a reasonable expectancy of realization have been liqui-
 38 dated and distributed as set forth in this section, the director shall exe-
 39 cute a certificate of dissolution. The credit union shall be subject to ex-
 40 amination by and reporting to the department of finance to determine that all
 41 procedures have been observed as required by this chapter, and shall pay such
 42 examination fees as are determined by the department of finance in accor-
 43 dance with its schedules.

44 (~~d~~4) If the credit union shall not be completely liquidated and its as-
 45 sets discharged within three (3) years after the special meeting of the mem-
 46 bers, the director may take possession of the books, records, and assets and
 47 proceed to complete liquidation. If the director determines after one (1)
 48 year from the commencement of liquidation proceedings that the liquidation
 49 is not proceeding in a reasonable and expeditious manner under all of the
 50 circumstances, he may take possession of the books, records, and assets and

1 appoint a liquidating agent who shall give a bond to complete the liquida-
2 tion.

3 ~~(e) Liquidation through the stabilization fund may be utilized after~~
4 ~~meeting the requirements of this section. The procedure of liquidation~~
5 ~~shall be as outlined in the practice and procedure policies as adopted by the~~
6 ~~Idaho credit union league stabilization fund and approved by the director of~~
7 ~~finance.~~

8 SECTION 13. That Section 26-2151, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 26-2151. ~~CREDIT UNION AS TRUSTEE~~ CUSTODIAL ACCOUNTS. A credit union
11 ~~may is authorized to act as trustee, custodian or fiduciary for members of~~
12 ~~the credit union and may receive reasonable compensation for so acting, of~~
13 ~~any trust created or organized in the United States and forming part of a~~
14 ~~stock bonus, pension, or profit-sharing plan which qualifies or qualified~~
15 ~~for specific tax treatment under section 401(d), section 403(b), or section~~
16 ~~408(a) of under any written trust instrument or custodial agreement in con-~~
17 ~~nection with a tax-advantaged savings plan authorized under the Internal~~
18 ~~Revenue Code of 1954, as amended or chapter 30, title 63, Idaho Code, if the~~
19 ~~funds of such trust or funds subject to the custodial agreement are invested~~
20 ~~only in savings accounts or deposits in such credit union or in obligations~~
21 ~~or securities issued by such credit union. All funds held in such fiduciary~~
22 ~~capacity by any such association credit union may be commingled for appro-~~
23 ~~priate purposes of investment, but individual records shall be kept by the~~
24 ~~fiduciary for each participant and shall show in proper detail all transac-~~
25 ~~tions engaged in under the authority of this section.~~

26 SECTION 14. That Chapter 21, Title 26, Idaho Code, be, and the same is
27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
28 ignated as Section 26-2157, Idaho Code, and to read as follows:

29 26-2157. AUTHORITY OF DIRECTOR TO CALL AND ATTEND SPECIAL MEETING OF
30 THE BOARD. The director may require and attend a special meeting of the board
31 of a credit union if an examination of the credit union results in a composite
32 capital adequacy, asset quality, management, earnings, liquidity, and sen-
33 sitivity to market risk (CAMELS) rating of "3," "4," or "5." The director's
34 request for a special board meeting must be made in writing to the chairman
35 and the secretary of the board. On receipt of such a request, the secretary
36 shall designate a time and place for the special board meeting, which shall
37 be held within thirty (30) days after receipt of the request. The director
38 may require the attendance of all of the directors at the special board meet-
39 ing, and an absence unexcused by the director constitutes a violation of this
40 chapter.

41 SECTION 15. That Section 26-2185, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 26-2185. APPLICABLE PROVISIONS OF THE IDAHO CREDIT UNION ACT. The fol-
44 lowing provisions of the Idaho credit union act shall apply to the Idaho cor-
45 porate credit union:

- 1 (a) Share reduction, section 26-2131, Idaho Code.
- 2 (b) Reports, section 26-2133, Idaho Code.
- 3 (c) Books and records, section 26-2135, Idaho Code.
- 4 (d) Examinations, section 26-2136A, Idaho Code.
- 5 (e) False reports, section 26-2137, Idaho Code.
- 6 (f) Cease and desist orders, suspension, and liquidation, section
- 7 26-2140, Idaho Code.
- 8 (g) Administration, rules and regulations, section 26-2144, Idaho
- 9 Code.
- 10 (h) Fiscal year, section 26-2112, Idaho Code.
- 11 (i) Penalties for official misconduct, section 26-2117, Idaho Code.