

**Assembly Bill No. 2157**

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Passed the Assembly August 22, 2002

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*Chief Clerk of the Assembly*

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Passed the Senate August 19, 2002

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Section 7130 of the Corporations Code and to amend Sections 1909, 14100, 14101, 14101.2, and 14101.4 of, to amend the heading of Article 3 (commencing with Section 14300) of Chapter 3 of Division 5 of, to amend and renumber the headings of Chapters 10 (commencing with Section 16000) and 11 (commencing with Section 16500) of Division 5 of, to add Sections 14001.1, 14001.5, 14002.5, 14101.8, 14102.2, 14102.4, 14102.6, 14211, 14305, 14306, 14307, 14308, 14309, 14310, 14311, 14312, 14313, 14314, 14315, 14316, 14317, 14318, and 14319 to, to repeal Section 14202.5 of, and to repeal and add Sections 14300, 14301, 14302, 14303, and 14304 of, the Financial Code, relating to credit unions, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2157, Papan. Credit unions.

The California Credit Union Law provides for the organization and regulation of credit unions by the Department of Financial Institutions, headed by the Commissioner of Financial Institutions.

This bill would recast the provisions of the law and revise the regulatory requirements with respect to a number of subjects, including organization, filing and certification, formation, and enforcement. The bill would make other related changes.

The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7130 of the Corporations Code is amended to read:

7130. The articles of incorporation of a corporation formed under this part shall set forth the following:

(a) The name of the corporation.

(b) (1) Except as provided in paragraph (2), the following statement:

“This corporation is a nonprofit mutual benefit corporation



organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.”

(2) In the case of a corporation formed under this part that is subject to the California Credit Union Law, the articles shall set forth a statement of purpose that is prescribed in the applicable provisions of the California Credit Union Law.

(3) The articles may include a further definition of the corporation’s purposes.

(c) The name and address in this state of the corporation’s initial agent for service of process in accordance with subdivision (b) of Section 8210.

SEC. 2. Section 1909 of the Financial Code is amended to read:

1909. (a) In this section, “governmental agency” includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency information relating to a suspected crime.

(f) The commissioner may furnish information to any person who provides share insurance or guaranty of the shares of a credit union in accordance with Section 14858, 16004, or 16503 of the Financial Code.

(g) This section does not prescribe the only circumstances under which the commissioner may furnish information.

SEC. 3. Section 14001.1 is added to the Financial Code, to read:



14001.1. This division is applicable to any person, other than a federal credit union engaging in the business of a credit union in this state. For purposes of this division, “person” shall have the meaning set forth in Section 5065 of the Corporations Code.

SEC. 4. Section 14001.5 is added to the Financial Code, to read:

14001.5. If and to the extent that any provision of this division is preempted by federal law, the provision shall not apply and shall not be enforced.

SEC. 5. Section 14002.5 is added to the Financial Code, to read:

14002.5. (a) Except as provided in subdivision (b), all provisions of law applicable to nonprofit mutual benefit corporations generally (including, but not limited to, the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code)) shall apply to credit unions. However, whenever any provision of this division applicable to credit unions is inconsistent with any provision of law applicable to nonprofit mutual benefit corporations generally, the provision of this division shall apply and the inconsistent provision of law applicable to nonprofit mutual benefit corporations generally shall not apply to a credit union.

(b) Notwithstanding the provisions of subdivision (a), the following provisions of the Corporations Code are not applicable to credit unions:

- (1) Section 7131.
- (2) Subdivision (a) of Section 7132.
- (3) Section 7142.
- (4) Subdivision (c) of Section 7223.
- (5) Subdivision (c) of Section 7225.
- (6) Article 4 (commencing with Section 7240) of Chapter 2 of Part 3 of Title 1.
- (7) Chapter 11 (commencing with Section 8110) of Part 3 of Division 2 of Title 1.
- (8) Chapter 16 (commencing with Section 8610) of Part 3 of Division 2 of Title 1.
- (9) Chapter 17 (commencing with Section 8710) of Part 3 of Division 2 of Title 1.



SEC. 6. Section 14100 of the Financial Code is amended to read:

14100. (a) Credit unions shall be incorporated under the Nonprofit Mutual Benefit Corporation Law of this state.

(b) The Secretary of State shall not file the articles of incorporation of a credit union organized pursuant to subdivision (a) unless the approval of the commissioner is endorsed thereon.

(c) The Secretary of State shall not file articles of incorporation setting forth a name in which “credit union” or related words appear unless the approval of the commissioner is attached. This section shall not apply to the articles of any corporation subject to the California Credit Union Law on which the approval of the commissioner is endorsed.

SEC. 7. Section 14101 of the Financial Code is amended to read:

14101. The articles of incorporation of every credit union shall set forth the following:

(a) The name of the corporation, which shall include the phrase “credit union.”

(b) (1) The following statement:

The purpose of the corporation is to engage in credit union business and any other lawful activities which are not prohibited to a credit union by applicable laws or regulations.

(2) By December 31, 2003, each credit union that immediately prior to the enactment of this section was authorized to operate as a credit union shall amend its articles to comply with the provisions of paragraph (1). Notwithstanding Section 7813.5 of the Corporations Code, the amendment of the articles of a credit union as required by paragraph (1) may be adopted by approval of the board alone.

(c) The name and address in this state of the corporation’s initial agent for service of process in accordance with subdivision (b) of Section 8210 of the Corporations Code.

(d) The names and addresses of five or more persons appointed to act as initial directors.

SEC. 8. Section 14101.2 of the Financial Code is amended to read:

14101.2. (a) The articles shall be signed by each director named in the articles, acknowledged pursuant to Section 5030 of



the Corporations Code and filed in the office of the Secretary of State.

(b) Corporate existence shall begin upon the filing of the articles and shall continue perpetually, unless otherwise expressly provided by law.

SEC. 9. Section 14101.4 of the Financial Code is amended to read:

14101.4. (a) The provisions of Section 14101, except as provided in subdivision (b) of that section, shall not apply to a credit union organized prior to January 1, 1981, but the articles of the credit union shall continue to be governed by the law applicable as of December 31, 1980, until an amendment of its articles pursuant to subdivision (b).

(b) Except as provided in subdivision (b) of Section 14101, a credit union organized prior to January 1, 1981, may amend its articles to conform to Section 14101 except that an initial agent for service of process shall not be set forth and the names and addresses of initial directors shall be deleted. The amendment may be adopted by the board of directors alone.

SEC. 10. Section 14101.8 is added to the Financial Code, to read:

14101.8. (a) No amendment of the articles of a credit union shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the Secretary of State with the commissioner's approval endorsed thereon. The amendment shall become effective upon being filed with the Secretary of State. Promptly after the amendment becomes effective, the credit union shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) An amendment of the articles set forth in an agreement of merger that requires the approval of the commissioner shall not be subject to the provisions of subdivision (a). An amendment meeting this criteria shall become effective at the time the merger becomes effective, pursuant to this division.

SEC. 11. Section 14102.2 is added to the Financial Code, to read:

14102.2. (a) No restated articles of a credit union shall become effective unless the certificate setting forth the restated articles, with the commissioner's approval endorsed thereon, is



filed with the Secretary of State. The restated articles shall become effective upon being filed with the Secretary of State.

(b) Promptly after the restated articles become effective, the credit union shall file with the commissioner a copy of the certificate setting forth the restated articles, certified by the Secretary of State.

SEC. 12. Section 14102.4 is added to the Financial Code, to read:

14102.4. (a) No certificate of correction of a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of correction shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of correction becomes effective, the credit union shall file with the commissioner a copy of the certificate of correction, certified by the Secretary of State.

SEC. 13. Section 14102.6 is added to the Financial Code, to read:

14102.6. (a) No certificate of revocation by a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of revocation shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of revocation becomes effective, the credit union shall file with the commissioner a copy of the certificate of revocation, certified by the Secretary of State.

SEC. 14. Section 14202.5 of the Financial Code is repealed.

SEC. 15. Section 14211 is added to the Financial Code, to read:

14211. In determining for purposes of this division whether the capital of any credit union is adequate, the commissioner shall consider the following:

(a) The nature and volume of the business and the proposed business of the credit union.

(b) The amount, nature, quality, and liquidity of the assets of the credit union.

(c) The amount and nature of the liabilities, including contingent liabilities, of the credit union.

(d) The history of, and prospects for, the credit union to earn and retain income.



- (e) The nature and scope of the operations of the credit union.
- (f) The performance of the management of the credit union.
- (g) Any other factors as are, in the opinion of the commissioner, relevant.

SEC. 16. The heading of Article 3 (commencing with Section 14300) of Chapter 3 of Division 5 of the Financial Code is amended to read:

### Article 3. Enforcement

SEC. 17. Section 14300 of the Financial Code is repealed.

SEC. 18. Section 14300 is added to the Financial Code, to read:

14300. For purposes of this chapter, the following terms shall have the following meanings:

(a) “Officer with a subject institution” means the position of director, officer, or employee with the subject institution.

(b) “Subject institution” means any of the following:

(1) A California credit union.

(2) A subsidiary of a California credit union.

(3) A foreign, whether other state or other nation, credit union, other than a federal credit union, that maintains an office in this state, with respect to the office.

(4) Any other person, other than a federal credit union, conducting business in this state.

(c) “Subject person,” when used with respect to a subject institution, means any of the following:

(1) A director, officer, employee, or agent of the subject institution.

(2) A member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) An independent contractor, including an appraiser or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause a material financial loss to, or a significant adverse effect on, the subject institution.

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.



(d) “Violation” includes any act done alone or with other persons for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation of any applicable statute, regulation, provision of a written order issued by the commissioner, or provision of a written operating agreement signed by the commissioner and a subject institution or subject person.

SEC. 19. Section 14301 of the Financial Code is repealed.

SEC. 20. Section 14301 is added to the Financial Code, to read:

14301. Any requirement in this chapter for notice or hearing before the commissioner issues an order may be waived by the person to whom the order is issued.

SEC. 21. Section 14302 of the Financial Code is repealed.

SEC. 22. Section 14302 is added to the Financial Code, to read:

14302. (a) The commissioner may bring an action in the name of the people of this state in the superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, this division or any regulation or order issued under this division. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant’s assets, or other relief may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all powers of the defendant’s officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in an action authorized by subdivision (a) a claim for ancillary relief, including a claim for restitution, disgorgement, or damages on behalf of the person injured by the



act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) Neither the provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court, nor any provision of subdivision (b) or (c), applies to any of the following:

(1) A California credit union that is authorized by the commissioner to transact credit union business.

(2) A foreign, whether other state or other nation, credit union that maintains an office in this state in accordance with federal law, the law of this state, and the law of the credit union's domicile.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that another person may have to bring the same or similar actions or to seek the same or similar relief.

SEC. 23. Section 14303 of the Financial Code is repealed.

SEC. 24. Section 14303 is added to the Financial Code, to read:

14303. (a) The commissioner may, without any prior notice or hearing, order a person to cease and desist from violating Section 14150 if either of the following criteria are met:

(1) The commissioner finds that the person has violated Section 14150.

(2) The commissioner finds that there is reasonable cause to believe that the person will imminently violate Section 14150.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of a person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not



be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 25. Section 14304 of the Financial Code is repealed.

SEC. 26. Section 14304 is added to the Financial Code, to read:

14304. If, after notice and a hearing, the commissioner finds any of the factors set forth in subdivision (a) or (b) with respect to a subject institution or subject person, the commissioner may order the subject institution or subject person to cease and desist from the action or violation:

(a) That the subject institution or subject person has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that the subject institution or subject person will imminently engage or participate in any unsafe or unsound act with respect to the business of the subject institution.

(b) That the subject institution or subject person has violated, is violating, or that there is reasonable cause to believe that the subject institution or subject person will imminently violate, any provision of this division, of any regulation or order issued under this division, of any other applicable law, or of any written agreement with the commissioner.

SEC. 27. Section 14305 is added to the Financial Code, to read:

14305. (a) If the commissioner finds that any of the factors set forth in Section 14304 is true with respect to a subject institution or subject person and that the action or violation is likely to have any of the consequences set forth in paragraphs (1) to (4), inclusive, the commissioner may, without any prior notice or hearing, order the subject institution or subject person to cease and desist from the action or violation:

(1) To cause the insolvency of the subject institution.

(2) To cause significant dissipation of the assets or earnings of the subject institution.

(3) To weaken the condition of the subject institution.

(4) To otherwise prejudice the interests of the members of the subject institution.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.



(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 28. Section 14306 is added to the Financial Code, to read:

14306. An order issued pursuant to Sections 14303 to 14305, inclusive, may include any of the following provisions:

(a) Require the subject institution or subject person to take affirmative action to correct any condition resulting from the action or violation, including any of the following actions:

(1) To make restitution or provide reimbursement, indemnification, or guarantee against loss, if the subject institution or subject person was unjustly enriched in connection with the action or violation or if the action or violation involved a reckless disregard for any provision of this division, any regulation or order issued under this division, any other applicable law, or any agreement with the commissioner.

(2) Restrict the growth of the subject institution.

(3) Dispose of any loan or other asset involved.

(4) Correct violations of law.

(5) Employ qualified officers or employees, who may be subject to approval of the commissioner.

(6) Take any other action that the commissioner may find to be necessary or advisable.

(b) Limit the business activities or functions of the subject institution or subject person.

SEC. 29. Section 14307 is added to the Financial Code, to read:



14307. (a) If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or of the details or purpose of any transaction or transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do any of the following:

(1) To cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(2) To take affirmative action to restore the books or records to a complete and accurate state.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 30. Section 14308 is added to the Financial Code, to read:

14308. If, after notice and a hearing, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution, the commissioner may issue an order suspending or



removing the subject person from the subject person's office, if any, with the subject institution and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated any provision of this division, of any regulation or order issued under this division, of any other applicable law relating to the business of the licensee, or of any written agreement with the commissioner.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution or any other business institution.

(3) That the subject person has, directly or indirectly, engaged or participated in any act which constitutes a breach of the subject person's fiduciary duty.

(b) That, by reason of the act, violation, or breach of fiduciary duty described in subdivision (a) the following have occurred:

(1) The subject institution or business institution has suffered or will probably suffer financial loss or other damage.

(2) The interests of the members of the subject institution have been or could be prejudiced.

(3) The subject person has received financial gain or other benefit.

(c) That the act, violation, or breach of fiduciary duty described in subdivision (a) either involves dishonesty on the part of the subject person or demonstrates the subject person's willful or continuing disregard for the safety or soundness of the subject institution or business institution.

SEC. 31. Section 14309 is added to the Financial Code, to read:

14309. (a) If the commissioner finds that any of the factors set forth in subdivision (a) of Section 14308, any of the factors set forth in subdivision (b) of Section 14308, and any of the factors set forth in subdivision (c) of Section 14308 are true with respect to a subject person of a subject institution, and that an action is necessary or advisable for the protection of the subject institution or the interests of the members of the subject institution, the commissioner may, without any prior notice or hearing, issue an order that does both of the following:



(1) Suspends the subject person from the subject person's office, if any, with the subject institution.

(2) Prohibits the subject person from participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing or within any longer period to which the subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 32. Section 14310 is added to the Financial Code, to read:

14310. (a) If the commissioner finds that any of the factors set forth in paragraph (1) and the factor set forth in paragraph (2) are true with respect to a subject person or former subject person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending the subject person or former subject person from his or her office, if any, with the subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with commission of or participation in any of the following crimes:



(A) A crime that involves dishonesty or breach of trust and that is punishable by imprisonment for a term exceeding one year.

(B) A criminal violation of any provision of this division.

(C) A criminal violation of Section 1956, 1957, or 1960 of Title 18 of, or Section 5322 or 5324 of Title 31 of, the United States Code.

(D) A criminal violation of a law of any jurisdiction other than the United States that is substantially similar to any of the statutes specified in subparagraph (C).

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(b) An order issued pursuant to subdivision (a) shall remain in effect until the indictment or the information, complaint, or similar pleading is finally disposed of or, if the order is earlier terminated by the commissioner, until the order is so terminated.

(c) If the commissioner finds that the factors set forth in paragraphs (1) and (2) are true with respect to a subject person or former subject person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been finally convicted of any crime of the type described in paragraph (1) of subdivision (a). For purposes of this paragraph, an agreement to enter a pretrial diversion or similar program is deemed to be a conviction.

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(d) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a) or (c), any subject person or former subject person of a subject institution to whom the order is issued may file with the commissioner an application for a hearing on the order.



(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the subject person or former subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing or within any longer period to which the subject person or former subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person or former subject person of a subject institution to whom an order is issued pursuant to subdivision (a) or (c) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(e) The fact that any subject person of a subject institution charged with a crime of the type described in paragraph (1) of subdivision (a) is not finally convicted of the crime does not preclude the commissioner from issuing an order regarding the subject person pursuant to any other section of this division.

SEC. 33. Section 14311 is added to the Financial Code, to read:

14311. (a) Any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, may apply to the commissioner to modify or rescind the order. In deciding the application, the commissioner shall consider whether it is in the public interest to modify or rescind the order and whether it is reasonable to believe that the subject person or former subject person will, if and when he or she becomes a subject person of a subject institution, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, to petition for judicial review of the order shall not be affected by the failure of the subject institution, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.



SEC. 34. Section 14312 is added to the Financial Code, to read:

14312. (a) For purposes of this section, “subject depository institution” means any of the following:

(1) A credit union that is organized under the laws of this state or that maintains an office in this state.

(2) An affiliate of an institution specified in paragraph (1).

(b) It shall be unlawful for a subject person or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner so long as the order is in effect:

(1) To act as a subject person of any subject depository institution.

(2) To vote any shares or other securities having voting rights for the election of any person as a director of a subject depository institution.

(3) To solicit, procure, transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of a subject depository institution having voting rights.

(4) To otherwise participate in any manner in the conduct of the affairs of any subject depository institution.

SEC. 35. Section 14313 is added to the Financial Code, to read:

14313. If the commissioner finds that any of the factors set forth in subdivisions (a) to (g), inclusive, are true with respect to a California credit union, the commissioner may by order, without any prior notice or hearing, take possession of the property and business of the California credit union:

(a) That the California credit union has violated any provision of this division, of another applicable law, of any order issued under this division, or of any written agreement with the commissioner, or has committed a material violation of any regulation of the commissioner.

(b) That the California credit union is conducting its business in an unsafe or unsound manner.

(c) That the California credit union is in such condition that it is unsafe or unsound for it to transact credit union business.



(d) That the California credit union has inadequate capital or is insolvent.

(e) That the California credit union failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(f) That the California credit union has ceased to transact credit union business.

(g) That the California credit union has, with the approval of its board, requested the commissioner to take possession of its property and business.

SEC. 36. Section 14314 is added to the Financial Code, to read:

14314. (a) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, within 10 days, apply to the superior court in the county where its principal executive office is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the California credit union to the California credit union or make any further order as may be just. The judgment of the court may be appealed by the commissioner or by the California credit union in the manner provided by law for appeals from the judgment of a superior court.

(b) At any time after the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, with the approval of the commissioner, resume business upon conditions as the commissioner may prescribe.

SEC. 37. Section 14315 is added to the Financial Code, to read:

14315. (a) On taking possession of the business and assets of any credit union as provided in this chapter, the commissioner may proceed to liquidate the credit union in the manner provided by Article 1 (commencing with Section 3100), except Sections 3100, 3101, and 3102, Article 3 (commencing with Section 3160), and Article 7 (commencing with Section 3240) of Chapter 17 of Division 1, and the provisions of those articles, except Sections



3100, 3101, and 3102, shall apply as if the California credit union were a California state commercial bank, or he or she may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9, except that in lieu of the certificate required under Section 15252 the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated, and may be a person, firm, or corporation as determined by the commissioner.

(b) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the commissioner may tender to the National Credit Union Administration an appointment as conservator or receiver of the California credit union. If the National Credit Union Administration accepts the appointment, the National Credit Union Administration shall have, in addition to any powers conferred by federal law, the powers conferred on the commissioner pursuant to subdivision (a).

SEC. 38. Section 14316 is added to the Financial Code, to read:

14316. The commissioner shall supervise the acts of the liquidating agent or the liquidating committee appointed under this article and may remove the liquidating agent or any member of the liquidating committee in his or her discretion.

SEC. 39. Section 14317 is added to the Financial Code, to read:

14317. If required by the commissioner, the liquidating agent or the members of the liquidating committee appointed under this article shall provide proof of bond coverage extending to the liquidating agent or members of the liquidating committee. The bond shall include coverage for fraud, dishonesty, and faithful



performance. The premium for that bond shall be paid out of the assets of the credit union.

SEC. 40. Section 14318 is added to the Financial Code, to read:

14318. If the commissioner retains possession of the assets of a credit union for purposes of liquidation, the commissioner shall use the services of civil service employees of the commissioner's office and the attorneys employed by the commissioner or the Department of Justice shall render all necessary legal services, as the commissioner may request.

SEC. 41. Section 14319 is added to the Financial Code, to read:

14319. In any case where the commissioner takes possession of a subject institution pursuant to this article without a prior notice or hearing, or takes action against a subject person without prior notice or hearing, the commissioner shall, upon taking possession or taking the action, concurrently provide to the subject institution or person a written order. The order shall set forth the condition or conditions of the subject institution or action or actions of the subject person that constitute the basis or bases for the commissioner's action as to the subject institution or subject person. In any case where the commissioner takes possession of a subject institution pursuant to this article, the commissioner shall establish clear evidence upon which he or she is taking action against the subject institution.

SEC. 42. The heading of Chapter 10 (commencing with Section 16000) of Division 5 of the Financial Code is amended and renumbered to read:

CHAPTER 11. FOREIGN (OTHER STATE) CREDIT UNIONS

SEC. 43. The heading of Chapter 11 (commencing with Section 16500) of Division 5 of the Financial Code is amended and renumbered to read:

CHAPTER 12. FOREIGN (OTHER NATION) CREDIT UNIONS

SEC. 44. (a) For purposes of subdivision (b), "subject credit union" means a California corporation which, immediately prior



to the operative date of this act, was authorized under the California Credit Union Law to operate as a credit union.

(b) The articles of each subject credit union shall, as of the operative date of this act, be deemed to provide that the purpose of the corporation is to engage in credit union business and any other lawful activities that are not, by applicable laws or regulations, prohibited to a credit union.

SEC. 45. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a more appropriate regulatory structure and comprehensive regulatory oversight over credit unions at the earliest possible time, it is necessary that this act take effect immediately.



Approved \_\_\_\_\_, 2002

\_\_\_\_\_  
*Governor*

