

1 AMENDMENT TO HOUSE BILL 4357

2 AMENDMENT NO. _____. Amend House Bill 4357 on page 1 by
3 replacing line 5 with the following:

4 "changing Sections 1.1, 7, 8, 9, 13, 16, 20, 23, 27, 30, 42,
5 and 61 and"; and

6 on page 3 by replacing lines 9, 10, and 11 with the
7 following:

8 "Danger of insolvency - For purposes of Section 61, a
9 credit union is in "danger of insolvency" if its net worth to
10 asset ratio falls below 2% or if the Department is unable to
11 ascertain, upon examination, the true financial condition of
12 the credit union. ~~The term "Danger of insolvency" as used in~~
13 ~~Section 61 means when a credit union falls below a 2% capital~~
14 ~~to-asset-ratio-"; and~~

15 on page 4 by inserting immediately below line 10 the
16 following:

17 "(205 ILCS 305/8) (from Ch. 17, par. 4409)

18 Sec. 8. Director's powers and duties. Credit unions are
19 regulated by the Department. The Director, in executing the
20 powers and discharging the duties vested by law in the
21 Department has the following powers and duties:

22 (1) To exercise the rights, powers and duties set forth
23 in this Act or any related Act.

1 (2) To prescribe rules and regulations for the
2 administration of this Act. The provisions of the Illinois
3 Administrative Procedure Act are hereby expressly adopted and
4 incorporated herein as though a part of this Act, and shall
5 apply to all administrative rules and procedures of the
6 Department under this Act.

7 (3) To direct and supervise all the administrative and
8 technical activities of the Department including the
9 employment of a Credit Union Supervisor who shall have
10 knowledge in the theory and practice of, or experience in,
11 the operations or supervision of financial institutions,
12 preferably credit unions, and such other persons as are
13 necessary to carry out his functions.

14 (4) To issue cease and desist orders when in the opinion
15 of the Director, a credit union is engaged or has engaged, or
16 the Director has reasonable cause to believe the credit union
17 is about to engage, in an unsafe or unsound practice, or is
18 violating or has violated or the Director has reasonable
19 cause to believe is about to violate a law, rule or
20 regulation or any condition imposed in writing by the
21 Department.

22 (5) To suspend from office and to prohibit from further
23 participation in any manner in the conduct of the affairs of
24 his credit union any director, officer or committee member
25 who has committed any violation of a law, rule, regulation or
26 of a cease and desist order or who has engaged or
27 participated in any unsafe or unsound practice in connection
28 with the credit union or who has committed or engaged in any
29 act, omission, or practice which constitutes a breach of his
30 fiduciary duty as such director, officer or committee member,
31 when the Director has determined that such action or actions
32 have resulted or will result in substantial financial loss or
33 other damage that seriously prejudices the interests of the
34 members.

1 (6) Except for the fees established in this Act, to
2 prescribe, by rule and regulation, fees and penalties for
3 preparing, approving, and filing reports and other
4 documents; 7 furnishing transcripts; 7 holding hearings; and
5 investigating applications for permission to organize, merge,
6 or convert; failure to maintain accurate books and records to
7 enable the Department to conduct an examination; and taking
8 supervisory actions.

9 (7) To destroy, in his discretion, any or all books and
10 records of any credit union in his possession or under his
11 control after the expiration of three years from the date of
12 cancellation of the charter of such credit unions.

13 (8) To make investigations and to conduct research and
14 studies and to publish some of the problems of persons in
15 obtaining credit at reasonable rates of interest and of the
16 methods and benefits of cooperative saving and lending for
17 such persons.

18 (9) To authorize, foster or establish experimental,
19 developmental, demonstration or pilot projects by public or
20 private organizations including credit unions which:

21 (a) promote more effective operation of credit
22 unions so as to provide members an opportunity to use and
23 control their own money to improve their economic and
24 social conditions; or

25 (b) are in the best interests of credit unions,
26 their members and the people of the State of Illinois.

27 (10) To cooperate in studies, training or other
28 administrative activities with, but not limited to, the NCUA,
29 other state credit union regulatory agencies and industry
30 trade associations in order to promote more effective and
31 efficient supervision of Illinois chartered credit unions.

32 (Source: P.A. 91-357, eff. 7-29-99.)

33 (205 ILCS 305/9) (from Ch. 17, par. 4410)

1 Sec. 9. Reports and examinations.

2 (1) Credit unions shall report to the Department on
3 forms supplied by the Department, in accordance with a
4 schedule published by the Department annually--on--or--before
5 the--first--day--of--February--in--each--year--on--forms--supplied--by
6 the--Department. A recapitulation of the Annual Reports shall
7 be compiled and published annually by the Department, for the
8 use of the General Assembly, credit unions, various
9 educational institutions and other interested parties. A
10 credit union which fails to file any report when due shall
11 pay to the Department a late filing fee of ~~of~~-\$5.00 for each day
12 the report is overdue as prescribed by rule. The Director may
13 extend the time for filing a report.

14 (2) The Director may require special examinations of and
15 special financial reports from a credit union or a credit
16 union organization in which a credit union loans or, invests,
17 or--delegates--substantially--all--managerial--duties--and
18 responsibilities when he determines that such examinations
19 and reports are necessary to enable the Department to
20 determine the safety of a credit union's operation or its
21 solvency. The cost to the Department of the aforesaid special
22 examinations shall be borne by the credit union being
23 examined as prescribed by rule.

24 (3) All credit unions incorporated under this Act shall
25 be examined at least biennially by the Department or, at the
26 discretion of the Director, by a public accountant registered
27 by the Department of Professional Regulation. The costs of an
28 examination shall be paid by the credit union. The scope of
29 all examinations by a public accountant shall be at least
30 equal to the examinations made by the Department. The
31 examiners shall have full access to, and may compel the
32 production of, all the books, papers, securities and accounts
33 of any credit union. A special examination shall be made by
34 the Department or by a public accountant approved by the

1 Department upon written request of 5 or more members, who
2 guarantee the expense of the same. Any credit union refusing
3 to submit to an examination when ordered by the Department
4 shall be reported to the Attorney General, who shall
5 institute proceedings to have its charter revoked. If the
6 Director determines that the examination of a credit union is
7 to be conducted by a public accountant registered by the
8 Department of Professional Regulation and the examination is
9 done in conjunction with the credit union's external
10 independent audit of financial statements, the requirements
11 of this Section and subsection (3) of Section 34 shall be
12 deemed met.

13 (4) A copy of the completed report of examination and a
14 review comment letter, if any, citing exceptions revealed
15 during the examination, shall be submitted to the credit
16 union by the Department. A detailed report stating the
17 corrective actions taken by the Board of Directors on each
18 exception set forth in the review comment letter shall be
19 filed with the Department within 40 days after the date of
20 the review comment letter, or as otherwise directed by the
21 Department. Any credit union through its officers, directors,
22 committee members or employees, which willfully provides
23 fraudulent or misleading information regarding the corrective
24 actions taken on exceptions appearing in a review comment
25 letter may have its operations restricted to the collection
26 of principal and interest on loans outstanding and the
27 payment of normal expenses and salaries until all exceptions
28 are corrected and accepted by the Department.

29 (Source: P.A. 91-755, eff. 1-1-01.)"; and

30 on page 5, line 9, by changing "and to" to "to"; and

31 on page 5 by replacing line 10 with the following:

32 "all or part of the assets of the credit union; and where
33 disclosure is"; and

1 on page 6, line 20, by changing "by" to "from"; and

2 on page 16 by inserting immediately below line 32 the
3 following:

4 "(205 ILCS 305/61) (from Ch. 17, par. 4462)

5 Sec. 61. Suspension.

6 (1) If the Director determines that any credit union is
7 bankrupt, insolvent, impaired or that it has willfully
8 violated this Act, or is operating in an unsafe or unsound
9 manner, he shall issue an order temporarily suspending the
10 credit union's operations for not more than 60 days. The
11 Board of Directors shall be given notice by registered or
12 certified mail of such suspension, which notice shall include
13 the reasons for such suspension and a list of specific
14 violations of the Act. The Director shall also notify the
15 members of the Credit Union Board of Advisors of any
16 suspension. The Director may assess to the credit union a
17 penalty, not to exceed the regulatory examination fee as set
18 forth in this Act, to offset costs incurred in determining
19 the condition of the credit union's books and records.

20 (2) Upon receipt of such suspension notice, the credit
21 union shall cease all operations, except those authorized by
22 the Director, or the Director may appoint a Manager-Trustee
23 to operate the credit union during the suspension period.
24 The Board of Directors shall, within 10 days of the receipt
25 of the suspension notice, file with the Director a reply to
26 the suspension notice by submitting a corrective plan of
27 action or a request for formal hearing on said action
28 pursuant to the Department's rules and regulations.

29 (3) Upon receipt from the suspended credit union of
30 evidence that the conditions causing the order of suspension
31 have been corrected, and after determining that the proposed
32 corrective plan of action submitted is factual, the Director
33 shall revoke the suspension notice, permit the credit union
34 to resume normal operations, and notify the Board of Credit

1 Union Advisors of such action.

2 (4) If the Director determines that the proposed
3 corrective plan of action will not correct such conditions,
4 he may take possession and control of the credit union. The
5 Director may permit the credit union to operate under his
6 direction and control and may appoint a Manager-Trustee to
7 manage its affairs until such time as the condition requiring
8 such action has been remedied, or in the case of insolvency
9 or danger of insolvency where an emergency requiring
10 expeditious action exists, the Director may involuntarily
11 merge the credit union without the vote of the suspended
12 credit union's Board of Directors or members (hereafter
13 involuntary merger) subject to rules promulgated by the
14 Director. No credit union shall be required to serve as a
15 surviving credit union in any involuntary merger. Upon the
16 request of the Director, a credit union by a vote of a
17 majority of its Board of Directors may elect to serve as a
18 surviving credit union in an involuntary merger. If the
19 Director determines that the suspended credit union should be
20 liquidated, he may appoint a Liquidating Agent and require of
21 that person such bond and security as he considers proper.

22 (5) Upon receipt of a request for a formal hearing, the
23 Director shall conduct proceedings pursuant to rules and
24 regulations of the Department. The credit union may request
25 the appropriate court to stay execution of such action.
26 Involuntary liquidation or involuntary merger may not be
27 ordered prior to the conclusion of suspension procedures
28 outlined in this Section.

29 (6) If, within the suspension period, the credit union
30 fails to answer the suspension notice or fails to request a
31 formal hearing, or both, the Director may then (i)
32 involuntarily merge the credit union if the credit union is
33 insolvent or in danger of insolvency and an emergency
34 requiring expeditious action exists or (ii) revoke the credit

1 union's charter, appoint a Liquidating Agent and liquidate
2 the credit union.

3 (Source: P.A. 90-665, eff. 7-30-98.)".