

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 465

96TH GENERAL ASSEMBLY

1361L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, and to enact in lieu thereof thirteen new sections relating to credit unions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 370.100, 370.101, 370.102, 370.157, 370.161, 370.162, 370.163, 370.164, 370.165, 370.310, 370.320, 370.353, and 370.359, to read as follows:

370.100. 1. There is created within the state [division of finance] **department of insurance, financial institutions and professional registration**, a [supervisor] **director of the division** of credit unions who shall have exclusive supervision of all credit unions operating under the laws of this state and may make necessary rules and regulations to carry out the provisions of this chapter.

2. The [supervisor] **director** of credit unions shall be appointed by the [commissioner of finance] **governor** to serve at his **or her** pleasure.

3. The [supervisor] **director** of credit unions shall maintain his office at Jefferson City, Missouri, and shall devote all of his time to the duties of his office.

4. No person shall be eligible to be appointed to the office unless he **or she** has had at least three years actual practical experience with credit union operation or unless he **or she** has served for the same period of time in the agency having charge of credit union operation in this or some other state of the United States, or in the national credit union administration.

5. The [supervisor of credit unions, with the approval of the commissioner of finance,] **director** may appoint a deputy [supervisor] **director** of credit unions and such examiners,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 assistant examiners and other employees and assistants as he **or she** shall deem necessary to
17 properly discharge his **or her** duties as [supervisor of credit unions] **director**.

18 6. The actual and necessary traveling and other divisional or office expenses of the
19 [supervisor of credit unions] **director**, the deputy [supervisor] **director**, and other assistants and
20 employees shall be paid out of the state treasury as provided by law.

21 7. The examiners and any person appointed as deputy [supervisor] **director** shall possess
22 the qualifications required for the [supervisor of credit unions, except that any person who was,
23 prior to the date of the enactment of this law, employed by the state division of finance and
24 whose duties were, at the time of the enactment of this law, principally concerned with credit
25 unions and had been so concerned for not less than one year shall be eligible to serve as deputy
26 supervisor or examiner. Appointment of examiners and assistant examiners shall be so made
27 that, as near as may be, one-half of their number, respectively, shall be members of the political
28 party polling the highest number of votes for governor at the last preceding state election, the
29 remaining one-half shall be members of the political party polling the next highest number of
30 votes for governor at the last preceding state election] **director**.

31 8. All persons appointed by the [supervisor of credit unions] **director** as authorized
32 herein shall perform the duties required of them by the [supervisor of credit unions] **director**,
33 and shall devote all of their time to their official duties.

370.101. 1. The director of the division of credit unions and all employees of the
2 **division of credit unions, which term shall, for purposes of this section, include special**
3 **agents, shall, before entering upon the discharge of their duties, take an oath that they will**
4 **not reveal the conditions or affairs of any credit union or any facts pertaining to the same,**
5 **that may come to their knowledge by virtue of their official positions, unless required by**
6 **law to do so in the discharge of the duties of their offices or when testifying in any court**
7 **proceeding. For purposes of this section, "credit union" shall mean any entity subject to**
8 **chartering, licensing, or regulation by the division of credit unions.**

9 **2. Neither the director of the division of credit unions nor any employees of the**
10 **division of credit unions who participate in the examination of any credit union, or who**
11 **may be called upon to make any official decision or determination affecting the operation**
12 **of any credit union, other than the members of the credit union commission, shall be an**
13 **officer or director of any credit union the division of credit unions regulates, nor shall they**
14 **receive, directly or indirectly, any payment or gratuity from any such organization, nor**
15 **engage in the negotiation of loans for others with any state-chartered credit union, nor**
16 **shall be indebted to any state-chartered credit union.**

17 **3. The director of the division of credit unions, in connection with any examination**
18 **or investigation of any person, company, or event, shall have the authority to compel the**

19 production of documents, in whatever form they may exist, and shall have the authority
20 to compel the attendance of and administer oaths to any person having knowledge of any
21 issue involved with the examination or investigation. The director may seek judicial
22 enforcement of an administrative subpoena by application to the appropriate court. An
23 administrative subpoena shall be subject to the same defenses or subject to a protective
24 order or conditions as provided and deemed appropriate by the court in accordance with
25 the Missouri supreme court rules.

370.102. 1. To ensure the integrity of the examination process, the director of the
2 division of credit unions and all employees of the division of credit unions, and its special
3 agents, shall be bound under oath to keep secret all facts and information obtained in the
4 course of all examinations and investigations except:

5 (1) To the extent that the public duty of the director requires the director to report
6 information to another government official or agency or take administrative or judicial
7 enforcement action regarding the affairs of a state-chartered credit union;

8 (2) When called as a witness in a court proceeding relating to such state-chartered
9 credit union's safety and soundness or in any criminal proceeding;

10 (3) When reporting on the condition of the state-chartered credit union to the
11 officers and directors of the state-chartered credit union;

12 (4) When reporting findings to a complainant, provided the disclosure is limited
13 to such complainant's account information;

14 (5) When exchanging information with any agency which regulates financial
15 institutions under federal law or the laws of any state when the director of the division of
16 credit unions determines that the sharing of information is necessary for the proper
17 performance by the director of the division of credit unions and the other agencies, that
18 such information will remain confidential as though subject to section 370.101 and this
19 section and that such agencies routinely share information with the division of credit
20 unions;

21 (6) When authorized by the state-chartered credit union's board of directors to
22 provide the information to anyone else; or

23 (7) When disclosure is necessary or required, the director may set conditions and
24 limitations, including an agreement of confidentiality or a judicial or administrative
25 protective order.

26 2. In all other circumstances, facts and information obtained by the director of the
27 division of credit unions and the employees and special agents of the division of credit
28 unions through examinations or investigations shall be held in confidence absent a court's
29 finding of compelling reasons for disclosure. Such finding shall demonstrate that the need

30 **for the information sought outweighs the public interest in free and open communications**
31 **during the examination or investigation process. To assure a meaningful hearing, any**
32 **state-chartered credit union that is not already a party to the judicial proceeding and**
33 **whose information is the subject of a records request or subpoena shall be joined or**
34 **notified and permitted to intervene in the hearing and to participate regarding the**
35 **production request or subpoena. In no event shall a state-chartered credit union, or any**
36 **officer, director, or employee thereof, be charged with libel, slander, or defamation for any**
37 **good faith communications with the director of the division of credit unions or any**
38 **employees of the division of credit unions.**

370.157. 1. [The director may remove any or all the officers, committee members and
2 directors and either appoint successors or call a meeting of the members to hold elections, notice
3 of the meeting to be given as provided in this section for special meetings of the members for
4 reorganization.

5 2. Unless removed by the director, the officers, committee members and directors shall
6 continue in their respective offices until their successors are elected and qualify.] **Whenever it**
7 **shall appear to the director, from any examination made by him or her or her or his**
8 **examiners, that any director, officer, or any other person participating in the conduct of**
9 **the affairs of a credit union subject to this chapter has committed any violation of law or**
10 **regulation or of a cease and desist order, or has violated any condition imposed in writing**
11 **by the director or any written agreement between such credit union and the director, or**
12 **has engaged or participated in any unsafe or unsound practice in connection with the**
13 **credit union, or has committed or engaged in any act, omission, or practice which**
14 **constitutes a breach of his or her fiduciary duty to the credit union, and the director**
15 **determines that the credit union has suffered or will probably suffer financial loss or other**
16 **damage or that the interests of its members could be prejudiced by reason of such violation**
17 **or practice or breach of fiduciary duty, or that the director or officer or other person has**
18 **received financial gain by reason of such violation or practice or breach of fiduciary duty,**
19 **and such violation or practice or breach of fiduciary duty is one involving personal**
20 **dishonesty on the part of such director, officer or other person, or one which demonstrates**
21 **a willful or continuing disregard for the safety or soundness of the credit union, the**
22 **director may serve upon such director, officer, or other person a written notice of his or**
23 **her intention to remove such person from office.**

24 2. When it shall appear to the director from any examination made by him or her
25 or his or her examiners that any director, officer, or any other person participating in the
26 conduct of the affairs of a credit union subject to this chapter, by conduct or practice with
27 respect to another such credit union or any business institution which resulted in financial

28 loss or other damage, has evidenced either his or her personal dishonesty or a willful or
29 continuing disregard for its safety and soundness and, in addition, has evidenced his or her
30 unfitness to continue as a director or officer and whenever it shall appear to the director
31 that any other person participating in the conduct of the affairs of a credit union subject
32 to this chapter, by conduct or practice with respect to such credit union or other
33 corporation or other business institution which resulted in financial loss or other damage,
34 has evidenced either his or her personal dishonesty or willful or continuing disregard for
35 its safety and soundness and, in addition, has evidenced his or her unfitness to participate
36 in the conduct of the affairs of such credit union, the director may serve upon such
37 director, officer, or other person a written notice of intention to remove him or her from
38 office or to prohibit his or her further participation in any manner in the conduct of the
39 affairs of this credit union or from any other credit union supervised by the director.

40 **3. Whenever it shall appear to the director to be necessary for the protection of any**
41 **credit union or its members, he or she may, by written notice to such effect served upon**
42 **any director, officer, or other person referred to in subsection 1 or 2 of this section,**
43 **suspend him or her from office or prohibit him or her from further participation in any**
44 **manner in the conduct of the affairs of the credit union. Such suspension or prohibition**
45 **shall become effective upon service of such notice and shall remain in effect pending the**
46 **completion of the administrative proceedings under the notice served under subsection 1**
47 **or 2 of this section and until such time as the director shall dismiss the charges specified**
48 **in such notice or, if an order of removal or prohibition is issued against the director or**
49 **officer or other person, until the effective date of any such order. Copies of any such notice**
50 **shall also be served upon the credit union of which he or she is a director or officer or in**
51 **the conduct of whose affairs he or she has participated.**

52 **4. Except as provided in subsection 5 of this section, any person who, under an**
53 **order issued under this section, has been removed or suspended from office in a credit**
54 **union or prohibited from participating in the conduct of the affairs of a credit union may**
55 **not, while such order is in effect, continue or commence to hold any office in, or participate**
56 **in any manner in, the conduct of the affairs of any other credit union subject to the**
57 **provisions of this chapter.**

58 **5. If, on or after the date an order is issued under this section which removes or**
59 **suspends from office any person or prohibits such person from participating in the conduct**
60 **of the affairs of a credit union, such party receives the written consent of the director,**
61 **subsection 4 of this section shall, to the extent of such consent, cease to apply to such person**
62 **with respect to the credit union described in the written consent and the director shall**
63 **publicly disclose such consent. Any violation of subsection 4 of this section by any person**

64 who is subject to an order described in subsection 4 of this section shall be treated as a
65 violation of the order.

370.161. A notice of intention to remove a director, officer, or other person from
2 office or to prohibit his or her participation in the conduct of the affairs of a credit union
3 shall contain a statement of the facts constituting grounds therefor, and shall fix a time and
4 place at which a hearing will be held thereon. Unless such director, officer, or other person
5 shall appear at the hearing in person, or by a duly authorized representative, he or she
6 shall be deemed to have consented to the issuance of an order of such removal or
7 prohibition. In the event of such consent or if upon the record made at any such hearing
8 the director shall find that any of the grounds specified in such notice have been
9 established, the director may issue such orders of suspension or removal from office, or
10 prohibition from participation in the conduct of the affairs of the credit union, as he or she
11 may deem appropriate. Any such order shall become effective at the expiration of thirty
12 days after service upon such credit union and the director, officer, or other person
13 concerned (except in the case of an order issued upon consent, which shall become effective
14 at the time specified therein). Such order shall remain effective and enforceable except to
15 such extent as it is stayed, modified, terminated, or set aside by action of the director or a
16 reviewing court.

370.162. Within ten days after any director, officer, or other person has been
2 suspended from office, prohibited from participation in the conduct of the affairs of a
3 credit union, or both, under subsection 3 of section 370.157, such director, officer, or other
4 person may apply to the circuit court of the county in which the credit union is located or
5 the circuit court of Cole County, for a stay of such suspension or prohibition pending the
6 completion of the administrative proceedings under the notice served upon such director,
7 officer, or other person under subsection 1 or 2 of section 370.157, and such court shall
8 have jurisdiction to stay such suspension or prohibition.

370.163. Whenever a director or officer of a credit union, or other person
2 participating in the conduct of the affairs of such credit union, is charged in any
3 information or complaint authorized by a prosecuting attorney or a United States attorney,
4 or in any indictment, with the commission of or participation in a crime involving
5 dishonesty or breach of trust which is punishable by imprisonment for a term exceeding
6 one year under state or federal law, the director may, if continued service or participation
7 by the individual may pose a threat to the interests of the credit union's members or may
8 threaten to impair the confidence in the credit union, by written notice served upon such
9 director, officer, or other person, suspend him or her from office or prohibit him or her
10 from further participation in any manner in the conduct of the affairs of the credit union.

11 **A copy of such notice shall also be served upon the credit union. Such suspension or**
12 **prohibition shall remain in effect until such information, indictment or complaint is finally**
13 **disposed of or until terminated by the director. In the event that a judgment of conviction**
14 **with respect to such crime is entered against such director, officer, or other person, and at**
15 **such time as such judgment is not subject to further appellate review, the director may, if**
16 **continued service or participation by the individual may pose a threat to the interests of**
17 **the credit union's members or may threaten to impair public confidence in the credit**
18 **union, initiate action to remove such officer as described in subsection 1 of section 370.157.**

370.164. If at any time because of the suspension of one or more directors under
2 **section 370.157 or sections 370.161 to 370.165 there shall be on the board of directors of a**
3 **credit union less than a quorum of directors not so suspended, all powers or functions**
4 **vested in or exercisable by such board shall vest in and be exercisable by the director or**
5 **directors on the board not so suspended, until such time as there shall be a quorum of the**
6 **board of directors. In the event all of the directors of a corporation are suspended under**
7 **section 370.157 or sections 370.161 to 370.165, the director shall appoint persons to serve**
8 **temporarily as directors in their place and stead pending the termination of such**
9 **suspensions, or until such time as those who have been suspended cease to be directors of**
10 **the credit union and their respective successors take office.**

370.165. A notice of suspension or order of removal issued under this chapter shall
2 **become effective immediately but any director, officer, or other person concerned may,**
3 **within thirty days of service of any notice of suspension or order of removal, request, in**
4 **writing, an opportunity to appear before the director to show that the continued service**
5 **to or participation in the conduct of the affairs of the credit union by such individual does**
6 **not, or is not likely to, pose a threat to the interests of the credit union's depositors or**
7 **threaten to impair public confidence in the credit union.**

370.310. 1. A credit union may lend to its members, as herein provided, for such
2 **purposes and upon such security as the bylaws provide and the credit committee or credit**
3 **manager shall approve, provided that no secured or unsecured loan shall be made in excess of**
4 **two thousand dollars, except that if ten percent of the assets of the credit union exceeds two**
5 **thousand dollars then the maximum amount of a loan by the credit union shall be ten percent of**
6 **its assets, and unsecured loans to any one member shall not exceed the limitations found in**
7 **current written policies of the board of directors.**

8 **2. A member who needs funds with which to purchase necessary supplies for growing**
9 **crops may receive a loan in installments instead of one sum.**

10 **3. A borrower may repay the whole or any part of his loan on any day on which the office**
11 **of the credit union is open for the transaction of business.**

12 4. All loans to directors, credit and supervisory committee members of the credit union
13 shall comply with all the requirements in this chapter and the credit union bylaws with respect
14 to loans to other members and may not be on terms more favorable than those of loans extended
15 to other member-borrowers [except that such loans, other than those secured by mortgages on
16 primary and secondary borrower-occupied residences, negotiable securities, licensed motor
17 vehicles, or shares shall not exceed twenty-five thousand dollars for each official] and such loans
18 shall also be reported at the next regularly scheduled meeting of the board of directors; and
19 further, all such loans shall be reported to the director of the division of credit unions annually.

 370.320. [1. All entrance fees, transfer fees and charges shall, after the payment of the
2 organization expenses, be known as reserve income, and shall be added to the reserve fund of
3 the credit union.

4 2. At the end of each accounting period the gross income shall be determined. From this
5 amount there shall be set apart to the reserve fund amounts in accord with the following
6 schedule:

7 (1) A credit union in operation for more than four years and having assets of five
8 hundred thousand dollars or more shall set aside:

9 (a) Ten percent of gross income until the reserve equals four percent of the outstanding
10 loans to members; and thereafter

11 (b) Five percent of gross income until the reserve equals six percent of outstanding loans
12 to members; or

13 (2) A credit union in operation less than four years or having assets of less than five
14 hundred thousand dollars shall set aside:

15 (a) Ten percent of gross income until the reserve equals seven and one-half percent of
16 outstanding loans to members; and thereafter

17 (b) Five percent of gross income until the reserve equals ten percent of outstanding loans
18 to members.

19 3. As used in this section, "outstanding loans to members" does not include loans to
20 other credit unions, loans fully secured by a member's shares, loans made under Title I of the
21 National Housing Act, or loans made under a federal or state student loan program or another
22 similar loan program where the loan is guaranteed by an agency of the federal or state
23 government.

24 4. The board of directors may increase or, where such fund equals or exceeds the total
25 reserve required in subsection 2 of this section, decrease the proportion of gross income to be set
26 aside as the reserve fund, and may transfer part or all of the undivided earnings to the reserve
27 fund.

28 5. The board of directors may establish additional reserves. In addition, a special reserve
29 for delinquent loans shall be established when required by regulation of the director of the
30 division of credit unions.] **All credit unions shall establish and maintain reserves sufficient**
31 **to qualify for and maintain federal share insurance and meet any requirements concerning**
32 **minimum reserves established by the director of the credit unions by regulation.**

370.353. 1. The board of directors of the merging credit union or credit unions, upon
2 approving the plan of merger or consolidation, shall direct, by a resolution, that the plan be
3 submitted at a meeting of the members or shareholders, which may be either an annual or special
4 meeting. Notice of the meeting shall be [given as provided in the bylaws of each credit union
5 affected, or by letter addressed to the last known address, as reflected on the books of the credit
6 union, to each member or shareholder thereof] **mailed or delivered to each member not more**
7 **than thirty days and not less than fourteen days prior to the meeting. All members shall**
8 **be given the opportunity to vote on the plan of merger or consolidation at a meeting or by**
9 **written or electronic ballot received no later than the date and time announced for the**
10 **meeting. All members should be provided the opportunity to vote, without being required**
11 **to attend the meeting where the proposition is voted on.** The notice, whether the meeting is
12 an annual or special meeting, shall state the place, day, hour, and purpose of the meeting, and a
13 copy or summary of the plan of merger or plan of consolidation shall be included in or enclosed
14 with the notice. The board of directors of the surviving credit union named in any such plan of
15 merger need not submit the merger plan to its members but shall, instead, ratify such merger plan
16 according to the procedure stated in section 370.351.

17 2. In the case of a consolidation, the board of directors of each credit union party to such
18 plan of consolidation must submit the plan of consolidation to its members according to the
19 procedure described in subsection 1 of this section.

20 3. The director may waive any membership meeting required under subsections 1 and
21 2 of this section upon the request of the board of directors of any of the merging or consolidating
22 credit unions if the credit union seeking the waiver is in financial difficulty, if its field of
23 membership is being lost or substantially reduced, or if it has only limited potential of growth.

370.359. 1. A credit union holding a certificate of organization under the laws of this
2 state may be converted into a federal credit union under the laws of the United States by
3 complying with the following requirements:

4 (1) The proposition for the conversion shall first be approved, and a date set for a vote
5 thereon by the members, either at a meeting to be held on the date or by [written] ballot to be
6 [filed] **cast** on or before the date, by a majority of the directors of the state credit union. Written
7 notice of the proposition and of the date set for the vote shall then be delivered in person to each
8 member, or **mailed or delivered** to each member at the address for the member appearing on the

9 records of the credit union, not more than thirty nor less than [seven] **fourteen** days prior to the
10 date. Approval of the proposition for conversion shall be by the affirmative vote of a majority
11 of the members[, in person or in writing] **who vote by written or electronic ballot. All**
12 **members should be provided the opportunity to vote, without being required to attend the**
13 **meeting where the proposition is voted on.**

14 (2) A statement of the results of the vote, verified by the affidavits of the president or
15 vice president and the secretary, shall be filed with the director of the division of credit unions
16 and the secretary of state within ten days after the vote is taken.

17 (3) Promptly after the vote is taken and in no event later than ninety days thereafter, if
18 the proposition for conversion was approved by the vote, the credit union shall take such action
19 as may be necessary under the United States law to make it a federal credit union, and within ten
20 days after receipt of the federal credit union charter there shall be filed with the secretary of state
21 and the director of the division of credit unions, a copy of the charter thus issued. Upon filing,
22 the credit union shall cease to be a state credit union.

23 (4) Upon ceasing to be a state credit union, the credit union shall no longer be subject
24 to any of the provisions of this chapter. The successor federal credit union shall be vested with
25 all of the assets and shall continue responsible for all the obligations of the state credit union to
26 the same extent as though the conversion had not taken place.

27 2. A federal credit union, organized under the laws of the United States, may be
28 converted into a state credit union by:

29 (1) Complying with all federal requirements requisite to enabling it to convert to a state
30 credit union;

31 (2) Filing with the director of the division of credit unions proof of the compliance,
32 satisfactory to him; and

33 (3) Filing with the director of the division of credit unions a certificate of organization
34 as required by this chapter.

35 3. When the director of the division of credit unions has been satisfied that all of these
36 requirements, and all other requirements of this chapter, have been complied with, he shall
37 approve the organization certificate, a copy of which shall be filed with the secretary of state.
38 Upon approval, the federal credit union shall become a state credit union as of the date it ceases
39 to be a federal credit union. The state credit union shall be vested with all of the assets and shall
40 continue responsible for all of the obligations of the federal credit union to the same extent as
41 though the conversion had not taken place.