

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 473

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 AND TO  
26 PROHIBIT EMPLOYMENT IN CERTAIN INSTANCES; REPEALING SECTION 26-2141,  
27 IDAHO CODE, RELATING TO SUSPENSION OF A CREDIT UNION; AMENDING CHAPTER  
28 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2141, IDAHO  
29 CODE, TO PROVIDE FOR THE APPOINTMENT OF A RECEIVER IN CERTAIN INSTANCES,  
30 TO PROVIDE CERTAIN REQUIREMENTS FOR A RECEIVER, AND TO DEFINE A TERM;  
31 AMENDING CHAPTER 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
32 TION 26-2141A, IDAHO CODE, TO PROVIDE FOR CERTAIN POWERS AND DUTIES FOR  
33 A RECEIVER; AMENDING SECTION 26-2142, IDAHO CODE, TO REMOVE A PROVISION  
34 REGARDING LIQUIDATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
35 TION 26-2151, IDAHO CODE, TO PROVIDE FOR CUSTODIAL ACCOUNTS IN CERTAIN  
36 INSTANCES; AMENDING CHAPTER 21, TITLE 26, IDAHO CODE, BY THE ADDITION OF  
37 A NEW SECTION 26-2157, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO CALL AND  
38 ATTEND A SPECIAL MEETING OF THE BOARD IN CERTAIN INSTANCES; AND AMENDING  
39 SECTION 26-2185, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.  
40

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

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

1           26-2136. ~~EXAMINATIONS AND FEES. The department of finance shall exam-~~  
 2 ~~ine each credit union no less often than once in eighteen (18) months, and~~  
 3 ~~more frequently whenever the director shall deem it necessary. Each credit~~  
 4 ~~union and all of its officers and agents shall be required to give to repre-~~  
 5 ~~sentatives of said department full access to all books, papers, securities,~~  
 6 ~~records and other sources of information under their control; and for the~~  
 7 ~~purpose of such examination, said representatives shall have power to sub-~~  
 8 ~~poena witnesses, administer oaths, compel the giving of testimony, and re-~~  
 9 ~~quire the submission of documents.~~

10           A report of such examination shall be forwarded to the president of each  
 11 credit union within thirty (30) days after the completion of the examina-  
 12 tion. Within thirty (30) days after the receipt of such report, a general  
 13 meeting of the directors and committeemen shall be called to consider mat-  
 14 ters contained in the report. A reply to the director shall be forwarded by  
 15 the board within fifteen (15) days.

16           (1) On or before February 15 of each calendar year, the director shall  
 17 fix and collect from each credit union an assessment fee based upon the total  
 18 assets of the credit union as of December 31 of the previous calendar year,  
 19 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
Over \$8 million .....	\$5,028.00 + \$.35 per thousand dollars of assets in excess of \$8 million

~~The director may in his discretion at any time accept in lieu of any portion of his examinations the findings or result of an audit by a firm of independent certified public accountants or other qualified person or firm approved by the director. The cost of the audit shall be borne by the credit union.~~

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

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

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

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

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

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

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

(b) May require the credit union to charge off or set up a special reserve for loans and investments and other assets.

(5) The director may make an examination and investigation into the affairs of:

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

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

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

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

(e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union and that has a ma-

1 jority interest in a credit union service organization in which a credit  
2 union has an interest;

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

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

7 (i) Data processing services;

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

11 (iii) Internet-related services, including but not limited to web  
12 services and electronic bill payments, mobile applications, sys-  
13 tem and software development and maintenance, and security moni-  
14 toring; and

15 (iv) Activities related to the business of a credit union; or

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

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

21 (6) In connection with examinations and investigations, the director  
22 may:

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

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

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

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

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

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

44 26-2136B. EXAMINATION REPORTS AND SPECIFIED OTHER INFORMATION CONFIDEN-  
45 TIAL -- EXCEPTIONS -- PENALTY. (1) The following shall be confidential  
46 and privileged and not subject to public disclosure under chapter 1, title  
47 74, Idaho Code, and shall be subject to the provisions of section 26-1111,  
48 Idaho Code:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) In a civil action in which the reports or information are sought to  
46 be discovered or used as evidence, they may be disclosed only in accordance  
47 with subsection (2) of this section and section 26-1111, Idaho Code. After  
48 in-camera review of the reports or information in accordance with subsection  
49 (2) of this section and section 26-1111 (3) (d), Idaho Code, the court may per-  
50 mit discovery and introduction of only those portions of the report or infor-

1 mation that are relevant and otherwise unobtainable by the requesting party.  
 2 To the extent the court permits discovery and introduction of relevant por-  
 3 tions of the report or information, the court shall attach any limitations  
 4 and restrictions necessary to ensure that the portions of the report or in-  
 5 formation discovered and introduced shall not be disclosed to the public.  
 6 This subsection does not apply to an action brought or defended by the direc-  
 7 tor.

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

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

13 26-2136C. DISCLOSURE OF CONFIDENTIAL INFORMATION BY THE DEPARTMENT --  
 14 PENALTY. (1) The department of finance, its director, employees, and former  
 15 employees shall not disclose to any person or agency any fact or information  
 16 obtained in the course of business of the department under this chapter, ex-  
 17 cept in the course of their official duties for the department and in the fol-  
 18 lowing cases:

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

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

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

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

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

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

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

40 26-2140. CEASE AND DESIST ORDER -- PENALTY. (1) Whenever it appears to  
 41 If the director that it is in the public interest, he may order a certificate  
 42 holder under finds that any credit union has engaged or is about to engage  
 43 in an unsafe or unsound practice in conducting the business of such credit  
 44 union, or any person has violated or is about to violate any provision of this  
 45 chapter, any rule or order issued under this chapter, any condition imposed  
 46 in writing by the director, or any written agreement entered into with the  
 47 director, the director may order the credit union or other person to cease

1 and desist from acts, practices and omissions which constitute a any such vi-  
 2 olation of this chapter, or would, in the opinion of the director, constitute  
 3 an unsafe or unsound practice. Such order shall be issued pursuant to chap-  
 4 ter 52, title 67, Idaho Code.

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

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

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

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

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

24 (b) The gravity of the violation;

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

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

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

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

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

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

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

41 26-2140A. CONSERVATORSHIP. (a~~1~~) The director may, in his discretion  
 42 and without notice, appoint himself or an agent as conservator and immedi-  
 43 ately take possession and control of the business and assets of any credit  
 44 union in any case in which:

45 (1~~a~~) The director determines that such action is necessary to conserve  
 46 the assets of any credit union or to protect the interests of the members  
 47 of such credit union;

48 (2~~b~~) The credit union, by a resolution of its board of directors, con-  
 49 sents to such an action by the director;



1 (3c) There is a violation of a cease and desist order, or any law, rule,  
2 regulation or any written agreement entered into with the director; or

3 (4d) There is concealment of books, papers, records, or assets of the  
4 credit union or refusal to submit books, papers, records, or affairs of  
5 the credit union for inspection to any examiner or to any lawful agent of  
6 the director.

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

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

18 (1a) The director shall permit such credit union to continue business  
19 subject to such terms and conditions as may be imposed by the director;

20 (2b) Such credit union is ~~liquidated~~ placed in receivership in accor-  
21 dance with the provisions of section 26-2141, Idaho Code; or

22 (3c) Otherwise ordered by the district court of the judicial district  
23 in which the credit union is located.

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

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

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

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

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

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

39 26-2140B. SUSPENSION OR REMOVAL OF DIRECTORS, SUPERVISORY COMMITTEE  
40 MEMBERS, OFFICERS, OR EMPLOYEES -- PROHIBITION OF FUTURE EMPLOYMENT. (1) The  
41 director may issue a written order, pursuant to chapter 52, title 67, Idaho  
42 Code, suspending or removing a credit union director, supervisory commit-  
43 tee member, officer, or employee upon finding that the director, supervisory  
44 committee member, officer, or employee has:

45 (a) Been dishonest or reckless in the performance of his official du-  
46 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 SECTION 9. That Section [26-2141](#), Idaho Code, be, and the same is hereby  
20 repealed.

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

24 26-2141. APPOINTMENT OF RECEIVER -- CONDITIONS -- PROCEEDING -- BOND  
25 -- REPORTING SCHEDULE -- SUBROGATION OF FEDERAL AGENCY TO RIGHTS OF DEPOSIT  
26 OWNERS. (1) If a credit union refuses to pay its shares, deposits, or obli-  
27 gations in accordance with the terms under which the shares were received or  
28 the deposits or obligations were incurred, becomes insolvent, or refuses to  
29 submit its books, papers, and records for inspection by the director, or if  
30 it appears to the director that the credit union is in an unsafe and unsound  
31 condition, the director may apply to the district court for Ada county or for  
32 the county in which the principal place of business of the credit union is lo-  
33 cated for appointment of a receiver for the credit union.

34 (2) In a proceeding for the appointment of a receiver, the court may act  
35 upon the application immediately and without notice to any person. If at  
36 any time it appears to the court that the asserted reasons for receivership  
37 may not exist, the court shall order the director to show cause as to why the  
38 court should not dissolve the receivership.

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

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

45 (5) If a credit union is closed and placed in receivership, and the  
46 insuring federal agency or private share insurer pays or makes available  
47 for payment the insured shares and deposit liabilities of the closed credit  
48 union, the federal agency or private share insurer, whether or not it has

1 become receiver of the credit union, is subrogated to all of the rights of the  
2 owners of the deposits against the closed credit union in the same manner and  
3 to the same extent as subrogation of the federal agency or private share in-  
4 surer under the laws governing the federal agency or private share insurer.

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

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

9 (b) Its liabilities exceed its assets.

10 (7) If a federal agency is appointed as receiver of a credit union, the  
11 receivership procedures of the federal agency shall govern the receiver-  
12 ship.

13 SECTION 11. 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 26-2141A, Idaho Code, and to read as follows:

16 26-2141A. RECEIVER -- DUTIES -- POWERS. (1) A receiver appointed pur-  
17 suant to section 26-2141, Idaho Code, shall do all of the following:

18 (a) Take possession of the books, records, and assets of the credit  
19 union and collect all debts, dues, and claims belonging to the credit  
20 union;

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

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

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

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

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

34 (g) After paying or providing for payment of all the administrative ex-  
35 penses and debts under subsections (e) and (f) of this section, pay rat-  
36 ably to the members of the credit union the balance of the net assets of  
37 the credit union in proportion to the number of shares held and owned by  
38 each;

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

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

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

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

1 (b) Employ agents, legal counsel, accountants, appraisers, consul-  
2 tants, and other personnel the receiver considers necessary to assist  
3 in the performance of the receiver's duties. With the prior approval of  
4 the district court, the receiver may employ personnel of the department  
5 of finance if the receiver considers the employment to be advantageous  
6 or desirable. The expense of employing personnel of the department of  
7 finance is an administrative expense of the liquidation that is payable  
8 to the department of finance;

9 (c) If approved by the district court, dispose of records of a credit  
10 union that are obsolete and unnecessary to administer the receivership  
11 or retain records, as necessary, through the termination of the re-  
12 ceivership or for any period following the receivership as the receiver  
13 may find necessary or appropriate. In such case, a receiver may pre-  
14 serve assets of a liquidated credit union and deposit them in an account  
15 to be used to maintain the records of a liquidated credit union after the  
16 closing of the receivership; and

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

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

21 26-2142. VOLUNTARY AND/OR INVOLUNTARY LIQUIDATION. (a~~1~~) A credit  
22 union may elect to dissolve voluntarily and wind up its affairs in the fol-  
23 lowing manner: The board shall adopt a resolution recommending that the  
24 credit union be dissolved voluntarily and directing that the question of  
25 dissolution be submitted to a regular or special meeting of the members.  
26 After the adoption of the resolution to voluntarily dissolve, no receipts  
27 shall be accepted nor withdrawals permitted from its share or deposit ac-  
28 counts, nor shall any loans be made nor any dividends declared nor paid  
29 pending final determination by its membership on the voluntary dissolution.  
30 At a meeting ~~especially~~ specially called to consider the matter, a majority  
31 of the entire membership may vote to dissolve the credit union, provided a  
32 copy was mailed to the members of the credit union at least ten (10) days  
33 prior thereto. Any member not present at such meeting may, within the next  
34 twenty (20) days, vote in favor of or may oppose dissolution by signing a  
35 statement in form approved by the department of finance and such vote shall  
36 have the force and effect as if cast at such meeting. The credit union shall  
37 thereupon immediately cease to do business except for the purposes of liqui-  
38 dation, and the president and secretary shall within five (5) days following  
39 such meeting notify the department of finance of intention to liquidate and  
40 shall include a list of the names of the directors and officers of the credit  
41 union together with their addresses.

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

1 (e3) The credit union shall continue in existence for the purpose of  
 2 discharging its debts, collecting and distributing its assets, and doing all  
 3 acts required in order to wind up its business, and may sue and be sued for the  
 4 purpose of enforcing such debts and obligations until its affairs are fully  
 5 adjusted. The board, or, in the case of involuntary dissolution, the liq-  
 6 uidating agent, shall apply and distribute the assets of the credit union or  
 7 the proceeds from any disposition of the assets of the credit union in the  
 8 following sequence:

9 (1a) ~~s~~Secured creditors, up to the value of their collateral;

10 (2b) ~~e~~Costs and expenses of liquidation, including a surety bond that  
 11 shall be required;

12 (3c) ~~w~~Wages due the employees of the credit union;

13 (4d) ~~e~~Costs and expenses incurred by creditors in successfully oppos-  
 14 ing the release of the credit union from certain debts as allowed by the  
 15 department of finance;

16 (5e) ~~t~~Taxes owed to the United States or any other governmental unit;

17 (6f) ~~d~~Debts owed to the United States;

18 (7g) ~~g~~General creditors, secured creditors, to the extent their  
 19 claims exceed the value of their collateral; and owners of deposit ac-  
 20 counts, to the extent such accounts are uninsured; and

21 (8h) ~~m~~Members, to the extent of uninsured share accounts and the organ-  
 22 ization that insured the accounts of the credit union.

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

31 (d4) If the credit union shall not be completely liquidated and its as-  
 32 sets discharged within three (3) years after the special meeting of the mem-  
 33 bers, the director may take possession of the books, records, and assets and  
 34 proceed to complete liquidation. If the director determines after one (1)  
 35 year from the commencement of liquidation proceedings that the liquidation  
 36 is not proceeding in a reasonable and expeditious manner under all of the  
 37 circumstances, he may take possession of the books, records, and assets and  
 38 appoint a liquidating agent who shall give a bond to complete the liquida-  
 39 tion.

40 ~~(e) Liquidation through the stabilization fund may be utilized after~~  
 41 ~~meeting the requirements of this section. The procedure of liquidation~~  
 42 ~~shall be as outlined in the practice and procedure policies as adopted by the~~  
 43 ~~Idaho credit union league stabilization fund and approved by the director of~~  
 44 ~~finance.~~

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

47 26-2151. ~~CREDIT UNION AS TRUSTEE CUSTODIAL ACCOUNTS.~~ A credit union  
 48 may be authorized to act as trustee, custodian or fiduciary for members of  
 49 the credit union and may receive reasonable compensation for so acting, ~~of~~

1 ~~any trust created or organized in the United States and forming part of a~~  
 2 ~~stock bonus, pension, or profit-sharing plan which qualifies or qualified~~  
 3 ~~for specific tax treatment under section 401(d), section 403(b), or section~~  
 4 ~~408(a) of under any written trust instrument or custodial agreement in con-~~  
 5 ~~nection with a tax-advantaged savings plan authorized under the Internal~~  
 6 ~~Revenue Code of 1954, as amended or chapter 30, title 63, Idaho Code, if the~~  
 7 ~~funds of such trust or funds subject to the custodial agreement are invested~~  
 8 ~~only in savings accounts or deposits in such credit union or in obligations~~  
 9 ~~or securities issued by such credit union. All funds held in such fiduciary~~  
 10 ~~capacity by any such association credit union may be commingled for appro-~~  
 11 ~~priate purposes of investment, but individual records shall be kept by the~~  
 12 ~~fiduciary for each participant and shall show in proper detail all transac-~~  
 13 ~~tions engaged in under the authority of this section.~~

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

17 26-2157. AUTHORITY OF DIRECTOR TO CALL AND ATTEND SPECIAL MEETING OF  
 18 THE BOARD. The director may require and attend a special meeting of the board  
 19 of a credit union if an examination of the credit union results in a composite  
 20 capital adequacy, asset quality, management, earnings, liquidity, and sen-  
 21 sitivity to market risk (CAMELS) rating of "3," "4," or "5." The director's  
 22 request for a special board meeting must be made in writing to the chairman  
 23 and the secretary of the board. On receipt of such a request, the secretary  
 24 shall designate a time and place for the special board meeting, which shall  
 25 be held within thirty (30) days after receipt of the request. The director  
 26 may require the attendance of all of the directors at the special board meet-  
 27 ing, and an absence unexcused by the director constitutes a violation of this  
 28 chapter.

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

31 26-2185. APPLICABLE PROVISIONS OF THE IDAHO CREDIT UNION ACT. The fol-  
 32 lowing provisions of the Idaho credit union act shall apply to the Idaho cor-  
 33 porate credit union:

- 34 (a) Share reduction, section 26-2131, Idaho Code.
- 35 (b) Reports, section 26-2133, Idaho Code.
- 36 (c) Books and records, section 26-2135, Idaho Code.
- 37 (d) Examinations, section 26-2136A, Idaho Code.
- 38 (e) False reports, section 26-2137, Idaho Code.
- 39 (f) Cease and desist orders, suspension, and liquidation, section
- 40 26-2140, Idaho Code.
- 41 (g) Administration, rules and regulations, section 26-2144, Idaho
- 42 Code.
- 43 (h) Fiscal year, section 26-2112, Idaho Code.
- 44 (i) Penalties for official misconduct, section 26-2117, Idaho Code.