

ACT #2017-

190

1 SB27
2 181527-2
3 By Senator Ross
4 RFD: Banking and Insurance
5 First Read: 07-FEB-17
6 PFD: 01/27/2017



1 SB27

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4 ENROLLED, An Act,

5 Relating to credit unions; to amend Section 5-17-8,
6 Code of Alabama 1975, as amended by Act 2016-133, 2016 Regular
7 Session, to extend the time for how often a credit union must
8 be examined by employees of the Alabama Credit Union
9 Administration from every 12 months to every 18 months.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 5-17-8, Code of Alabama 1975, as
12 amended by Act 2016-133, 2016 Regular Session, is amended to
13 read as follows:

14 "\$5-17-8.

15 "(a) Credit unions shall report to the Administrator
16 of the Alabama Credit Union Administration at least annually
17 on or before January 31 in such manner and form as required by
18 the administrator for that purpose. Additional reports may be
19 required. Credit unions shall be examined at least ~~annually~~
20 every 18 months by employees of the ~~administrator~~
21 administration or by other persons designated by the
22 administrator. For failure to file reports when due, unless
23 excused for cause by the administrator, the credit union shall
24 pay to the State Treasurer five dollars (\$5) for each day of
25 its delinquency.

1 "(b) If the administrator determines that the credit
2 union is violating this chapter, or is insolvent, the
3 administrator may suspend operations of the credit union by
4 issuing an order requiring that the credit union cease
5 operations pending a hearing on the revocation of the
6 certificate of approval, or the administrator may set a date
7 for a hearing on the revocation of the certificate of approval
8 without suspending operations of the credit union. If the
9 administrator suspends operations of the credit union, a
10 hearing on the revocation of the certificate of authority
11 shall be held by the administrator if requested within 90 days
12 from the date of the order requiring suspension of operations.
13 If demanded by the credit union, the hearing on revocation of
14 the certificate of authority, whether or not the administrator
15 has suspended operations of the credit union pending the
16 hearing, shall be conducted on the record by the administrator
17 who shall also make findings of fact and a written
18 determination concerning revocation of the certificate of
19 authority. The determination may contain an order requiring
20 that credit union to immediately suspend operations or
21 continue in effect a previous order requiring the suspension
22 of operations. If the determination is that the credit union
23 is violating this chapter, or is insolvent, and that the
24 certificate of authority be revoked, and if, for a period of
25 15 days after the hearing, any violation continues, the

1 administrator may revoke the certificate and take possession
2 of the business and property of the credit union and maintain
3 possession until the administrator shall permit it to continue
4 business or its affairs are finally liquidated through merger
5 or otherwise.

6 "(c) The administrator may, with the approval of a
7 majority of the Credit Union Board of the Alabama Credit Union
8 Administration, issue a cease and desist order upon finding
9 that the credit union or any officer, director, committee
10 member, or employee has done any one of the following:

11 "(1) Committed any violation of a law, rule, or
12 regulation.

13 "(2) Engaged or participated in any unsafe or
14 unsound practice in connection with the credit union business.

15 "(3) Engaged in any act, omission, or practice which
16 constitutes a breach of fiduciary duty to the credit union.

17 "(4) Committed any fraudulent or questionable
18 practice in the conduct of the credit union's business which
19 endangers the credit union's reputation or threatens
20 insolvency.

21 "(5) Violated any condition imposed in writing by
22 the administrator or any written agreement made with the
23 administrator.

24 "(6) Concealed, destroyed, removed, falsified, or
25 perjured any book, record, paper, report, statement, or

1 account related to the business and affairs of the credit
2 union.

3 "Any cease and desist order shall be effective not
4 earlier than 10 calendar days after it is delivered to the
5 credit union. The credit union or any person subject to a
6 cease and desist order shall have 10 calendar days from the
7 receipt of any cease and desist order to appeal to the Credit
8 Union Board of the Alabama Credit Union Administration by
9 serving the administrator with a written notice of appeal
10 within the 10-day period. Upon receipt of a notice of appeal
11 from the credit union, the effect of the cease and desist
12 order will be suspended pending a decision upon appeal;
13 provided that a majority of the Credit Union Board of the
14 Alabama Credit Union Administration may order that a cease and
15 desist order be in force and effect pending the decision on
16 appeal. A hearing of any appeal shall be held before the
17 Credit Union Board of the Alabama Credit Union Administration
18 within 60 calendar days of the notice of appeal and the
19 decision of the Credit Union Board shall be rendered within 30
20 calendar days after the conclusion of the hearing.

21 "(d) The Administrator of the Alabama Credit Union
22 Administration may suspend from office and prohibit further
23 participation in any manner in the conduct of the affairs of a
24 credit union, any director, officer, committee member, or
25 employee who has done any one of the following:

1 "(1) Committed any violation of a law, rule, or
2 regulation.

3 "(2) Engaged or participated in any unsafe or
4 unsound practice in connection with the credit union business.

5 "(3) Engaged in any act, omission, or practice which
6 constitutes a breach of fiduciary duty to the credit union.

7 "(4) Committed any fraudulent or questionable
8 practice in the conduct of the credit union's business which
9 endangers the credit union's reputation or threatens
10 insolvency.

11 "(5) Violated any condition imposed in writing by
12 the administrator or any written agreement made with the
13 administrator.

14 "(6) Concealed, destroyed, removed, falsified, or
15 perjured any book, record, paper, report, statement, or
16 account related to the business and affairs of the credit
17 union.

18 "(7) Unless the administrator directs otherwise, the
19 prohibition against participation in the conduct of the
20 affairs of a credit union shall remain effective until it is
21 rescinded by a vote of the Credit Union Board of the Alabama
22 Credit Union Administration.

23 "(e) A person subject to an order issued under
24 subsection (d) may file an appeal in writing delivered to the
25 administrator not more than 10 calendar days after the

1 papers, records, or affairs of the credit union for inspection
2 to any examiner or to any lawful agent of the Alabama Credit
3 Union Administration.

4 "(g) Not later than 10 calendar days after the date
5 on which the Alabama Credit Union Administration takes
6 possession and control of the business and assets of a credit
7 union pursuant to subsection (f), officials of the credit
8 union who were terminated by the conservator may apply to the
9 circuit court for the judicial circuit in which the principal
10 office of the credit union is located for an order requiring
11 the administration to show cause why it should not be enjoined
12 from continuing possession and control. Except as provided in
13 this subsection, no court may take any action, except at the
14 request of the Credit Union Board by regulation or order, to
15 restrain or affect the exercise of powers or functions of the
16 board as conservator.

17 "(h) The administrator shall report to the Credit
18 Union Board of the Alabama Credit Union Administration at
19 least semi-annually on the condition of the credit unions in
20 which the administration serves as conservator. Reports shall
21 contain the following:

22 "(1) The most recent income statement and balance
23 sheet of the credit union.

24 "(2) Actions taken since the last report by the
25 administrator in its role as conservator of the credit union.

1 "(3) A detailed report of all expenditures,
2 reimbursements, and other financial considerations paid out of
3 the assets of the credit union to the Alabama Credit Union
4 Administration or its designated agents during
5 conservatorship.

6 "(4) A business plan outlining necessary actions and
7 timetables under which the credit union would remain under
8 conservatorship.

9 "(i) The Alabama Credit Union Administration may
10 maintain possession and control of the business and assets of
11 the credit union and may operate the credit union until the
12 time as the following occurs:

13 "(1) The administrator shall permit the credit union
14 to continue business subject to the terms and conditions as
15 may be imposed by the Alabama Credit Union Administration.

16 "(2) The credit union is liquidated in accordance
17 with the provisions of Section 5-17-21.

18 "(3) The Credit Union Board of the Alabama Credit
19 Union Administration votes by a majority of voting members
20 that the Alabama Credit Union Administration shall relinquish
21 possession and control of the credit union. Such vote shall be
22 held on at least a semi-annual basis while the credit union is
23 held in conservatorship by the Alabama Credit Union
24 Administration.

1 "(j) The Alabama Credit Union Administration may
2 appoint special agents as it considers necessary in order to
3 assist the administration in carrying out its duties as a
4 conservator under this section.

5 "(k) All costs incurred by the administration in
6 exercising its authority under this section and Section
7 5-17-8.1, including, without limitation, all expenses and
8 legal fees incurred in exercising its authority or defending
9 any action taken pursuant to its exercise of authority, and
10 any appeal by any credit union or by any director, officer,
11 committee member, or employee thereof shall be paid out of the
12 assets of the credit union.

13 "(l) The conservator shall have all powers of the
14 members, the directors, the officers, and the committees of
15 the credit union and shall be authorized to operate the credit
16 union in its own name or to conserve its assets in the manner
17 and extent authorized by the administration.

18 "(m) After taking possession of the property and
19 business of a credit union through conservatorship, the
20 conservator may terminate or adopt any executory contract to
21 which the credit union may be a party. The termination of any
22 contracts shall be made within six months after the
23 conservator has obtained knowledge of the existence of the
24 contract or lease. Any provision in the contract or lease
25 which provides for damages or cancellation fees upon

1 termination shall not be binding on the conservator or credit
2 union. The directors, the conservator, and the credit union
3 are not liable for damages arising from or relating to such
4 executory contracts.

5 "(n) The administrator may appoint a temporary board
6 of directors to any credit union subject to conservatorship.

7 "(o) (1) Notwithstanding any other provision of state
8 law, if the administrator determines that an emergency
9 requiring expeditious action exists with respect to a credit
10 union, that other alternatives are not reasonably available
11 consistent with National Credit Union Administration
12 precedent, and that the public interest, including the
13 interests of the members of the credit union, would best be
14 served by such action, the administrator may do either of the
15 following:

16 "a. Initiate the involuntary merger of a credit
17 union that is insolvent or is in danger of insolvency with any
18 other credit union or may authorize a credit union to purchase
19 any of the assets of, or assume any of the liabilities of, any
20 other credit union that is insolvent or in danger of
21 insolvency.

22 "b. Authorize a financial institution whose deposits
23 or accounts are insured to purchase any of the assets of, or
24 assume any of the liabilities of, a credit union that is
25 insolvent or in danger of insolvency, except that prior to

1 exercising this authority the administrator shall attempt to
2 effect a merger with, or purchase and assumption by, another
3 credit union as provided in paragraph a.

4 "(2) For purposes of the authority contained in this
5 subsection, insured share and deposit accounts of the credit
6 union, upon consummation of the purchase and assumption, may
7 be converted to insured deposits or other comparable accounts
8 in the acquiring institution, and the administrator and the
9 insuring organization shall be relieved of any liability to
10 the credit union's members with respect to those accounts."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

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Del Mar

President and Presiding Officer of the Senate

Mac McClatchey

Speaker of the House of Representatives

SB27

Senate 23-FEB-17

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 18-APR-17

By: Senator Ross

APPROVED 4-27-2017

TIME 11:00 AM

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2017-190
Bill Num...: S-27

Recv'd 04/27/17 11:43amSLF

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PONSORS

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SENATE ACTION

DATE: 2-7 2017
RD 1 RFD BFI

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

This Bill was referred to the Standing Committee of the Senate on BFI

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report

w/amd(s) 6 w/sub 0 w/eng sub 0
years 6 days 0 abstain 0
this 21 day of Feb 2017

Glade Blackwell, Chairperson

DATE: 2-21 2017
RF FAU RD 2 CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 27.

years 20 nays 5 abstain 0
PATRICK HARRIS,
Secretary

DATE: 2-23-17 RD 3 at length
PASSED PASSED AS AMENDED

years 17 nays 0 abstain 0
And was ordered sent forthwith to the House.

PATRICK HARRIS,
Secretary

HOUSE ACTION

DATE: 2-28 2017
RD 1 RFD F3

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on

Financial Services

was acted upon by such Committee in session, and returned therefrom to the House with the recommendation that it be Passed,

w/amd(s) 0 w/sub 0
this 9 day of MARCH, 2017.

Ken Johnson, Chairperson

DATE: 3-7 2017
RF RD 2 CAL

DATE: _____ 20____
RE-REFERRED RE-COMMITTED

COMMITTEE _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 27.

YEAS 49 NAYS 2
JEFF WOODARD,
Clerk