

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Credit Union Act is amended by  
5 changing Section 8 as follows:

6 (205 ILCS 305/8) (from Ch. 17, par. 4409)

7 Sec. 8. Secretary's powers and duties. Credit unions are  
8 regulated by the Department. The Secretary in executing the  
9 powers and discharging the duties vested by law in the  
10 Department has the following powers and duties:

11 (1) To exercise the rights, powers and duties set forth  
12 in this Act or any related Act. The Director shall oversee  
13 the functions of the Division and report to the Secretary,  
14 with respect to the Director's exercise of any of the  
15 rights, powers, and duties vested by law in the Secretary  
16 under this Act. All references in this Act to the Secretary  
17 shall be deemed to include the Director, as a person  
18 authorized by the Secretary or this Act to assume  
19 responsibility for the oversight of the functions of the  
20 Department relating to the regulatory supervision of  
21 credit unions under this Act.

22 (2) To prescribe rules and regulations for the  
23 administration of this Act. The provisions of the Illinois

1 Administrative Procedure Act are hereby expressly adopted  
2 and incorporated herein as though a part of this Act, and  
3 shall apply to all administrative rules and procedures of  
4 the Department under this Act.

5 (3) To direct and supervise all the administrative and  
6 technical activities of the Department including the  
7 employment of a Credit Union Supervisor who shall have  
8 knowledge in the theory and practice of, or experience in,  
9 the operations or supervision of financial institutions,  
10 preferably credit unions, and such other persons as are  
11 necessary to carry out his functions. The Secretary shall  
12 ensure that all examiners appointed or assigned to examine  
13 the affairs of State-chartered credit unions possess the  
14 necessary training and continuing education to effectively  
15 execute their jobs.

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

24 (5) To suspend from office and to prohibit from further  
25 participation in any manner in the conduct of the affairs  
26 of his credit union any director, officer or committee

1 member who has committed any violation of a law, rule,  
2 regulation or of a cease and desist order or who has  
3 engaged or participated in any unsafe or unsound practice  
4 in connection with the credit union or who has committed or  
5 engaged in any act, omission, or practice which constitutes  
6 a breach of his fiduciary duty as such director, officer or  
7 committee member, when the Secretary has determined that  
8 such action or actions have resulted or will result in  
9 substantial financial loss or other damage that seriously  
10 prejudices the interests of the members.

11 (6) To assess a civil penalty against a credit union  
12 ~~for a violation of this Act, any rule adopted in accordance~~  
13 ~~with this Act, any order of the Secretary issued under his~~  
14 ~~or her authority under this Act, or any other action that~~  
15 ~~in the Secretary's discretion is an unsafe or unsound~~  
16 ~~practice~~ provided that:

17 (A) the Secretary reasonably determines, based on  
18 objective facts and an accurate assessment of  
19 applicable legal standards, that the credit union has:

20 (i) committed a violation of this Act, any rule  
21 adopted in accordance with this Act, or any order  
22 of the Secretary issued pursuant to his or her  
23 authority under this Act; or

24 (ii) engaged or participated in any unsafe or  
25 unsound practice;

26 (B) before a civil penalty is assessed under this

1 item (6), the Secretary must make the further  
2 reasonable determination, based on objective facts and  
3 an accurate assessment of applicable legal standards,  
4 that the credit union's action constituting a  
5 violation under subparagraph (i) of paragraph (A) of  
6 item (6) or an unsafe and unsound practice under  
7 subparagraph (ii) of paragraph (A) of item (6):

8 (i) directly resulted in a substantial and  
9 material financial loss or created a reasonable  
10 probability that a substantial and material  
11 financial loss will directly result; or

12 (ii) constituted willful misconduct or a  
13 material breach of fiduciary duty of any director,  
14 officer, or committee member of the credit union;

15 Material financial loss, as referenced in this  
16 paragraph (B), shall be assessed in light of  
17 surrounding circumstances and the relative size and  
18 nature of the financial loss or probable financial  
19 loss. Certain benchmarks shall be used in determining  
20 whether financial loss is material, such as a  
21 percentage of total assets or total gross income for  
22 the immediately preceding 12-month period. Absent  
23 compelling and extraordinary circumstances, no civil  
24 penalty shall be assessed, unless the financial loss or  
25 probable financial loss is equal to or greater than  
26 either 1% of the credit union's total assets for the

1 immediately preceding 12-month period, or 1% of the  
 2 credit union's total gross income for the immediately  
 3 preceding 12-month period, whichever is less;

4 (C) ~~(A)~~ before a civil penalty is assessed under  
 5 this item (6), the credit union must be expressly  
 6 advised in writing of the:

7 (i) specific violation that could subject it  
 8 to a penalty under this item (6); and

9 (ii) the specific remedial action to be taken  
 10 within a specific and reasonable time frame to  
 11 avoid imposition of the penalty; ~~-~~

12 (D) Civil penalties assessed under this item (6)  
 13 shall be remedial, not punitive, and reasonably  
 14 tailored to ensure future compliance by the credit  
 15 union with the provisions of this Act and any rules  
 16 adopted pursuant to this Act;

17 (E) ~~(B)~~ a credit union's failure to take timely  
 18 remedial action with respect to the specific violation  
 19 may result in the issuance of an order assessing a  
 20 civil penalty up to the following maximum amount, based  
 21 upon the total assets of the credit union:

22 (i) Credit unions with assets of less than \$10  
 23 million..... \$1,000

24 (ii) Credit unions with assets of at least \$10  
 25 million and less than \$50 million ..... \$2,500

26 (iii) Credit unions with assets of at least \$50

1 million and less than \$100 million ..... \$5,000

2 (iv) Credit unions with assets of at least \$100  
3 million and less than \$500 million ..... \$10,000

4 (v) Credit unions with assets of at least \$500  
5 million and less than \$1 billion ..... \$25,000

6 (vi) Credit unions with assets of \$1 billion  
7 and greater ..... \$50,000; and

8 (F) ~~(C)~~ an order assessing a civil penalty under  
9 this item (6) shall take effect upon service of the  
10 order, unless the credit union makes a written request  
11 for a hearing under 38 IL. Adm. Code 190.20 of the  
12 Department's rules for credit unions within 90 days  
13 after issuance of the order; in ~~in~~ that event, the  
14 order shall be stayed until a final administrative  
15 order is entered. ~~and~~

16 ~~(D) in the event a credit union commits a~~  
17 ~~subsequent violation that is substantially similar to~~  
18 ~~the initial violation for which a cure period under~~  
19 ~~paragraph (A) of this item (6) was provided the credit~~  
20 ~~union, no additional cure period shall be required~~  
21 ~~before another order is issued assessing a civil~~  
22 ~~penalty for the subsequent violation. Any such order~~  
23 ~~shall take effect upon service of the order, subject to~~  
24 ~~the credit union's right to request a hearing as~~  
25 ~~described in paragraph (C) of this item (6). If a~~  
26 ~~hearing is requested, the order shall be stayed until a~~

1           ~~final administrative order is entered.~~

2           This item (6) shall not apply to violations separately  
3 addressed in rules as authorized under item (7) of this  
4 Section.

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

13           (8) To destroy, in his discretion, any or all books and  
14 records of any credit union in his possession or under his  
15 control after the expiration of three years from the date  
16 of cancellation of the charter of such credit unions.

17           (9) To make investigations and to conduct research and  
18 studies and to publish some of the problems of persons in  
19 obtaining credit at reasonable rates of interest and of the  
20 methods and benefits of cooperative saving and lending for  
21 such persons.

22           (10) To authorize, foster or establish experimental,  
23 developmental, demonstration or pilot projects by public  
24 or private organizations including credit unions which:

25           (a) promote more effective operation of credit  
26 unions so as to provide members an opportunity to use

1           and control their own money to improve their economic  
2           and social conditions; or

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

5           (11) To cooperate in studies, training or other  
6           administrative activities with, but not limited to, the  
7           NCUA, other state credit union regulatory agencies and  
8           industry trade associations in order to promote more  
9           effective and efficient supervision of Illinois chartered  
10          credit unions.

11        (Source: P.A. 97-133, eff. 1-1-12.)

12          Section 99. Effective date. This Act takes effect upon  
13        becoming law.