



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

Phone: (360) 902-8701

FAX: (360) 704-6901

September 19, 2001

No. B-01-13

Division Issues Summary of 2001 Bill (HB 1366) Amending Washington State Credit Union Act and Washington State Corporate Credit Union Act

HB 1366, effective July 22, 2001, revised the Washington State Credit Union Act, Chapter 31.12 RCW, and the Washington State Corporate Credit Union Act, Chapter 31.13 RCW. Enclosed is a copy of our summary of the primary revisions made by HB 1366 and a copy of HB 1366.

DCU Summary of
HB 1366 (Chapter 83, Laws of 2001), amending
Washington State Credit Union Act,
Chapter 31.12 RCW,
and
Washington State Corporate Credit Union Act,
Chapter 31.13 RCW

Effective July 22, 2001

DCU Opinion No. O-01-7
Dated September 19, 2001

Prepared by Parker Cann, Director of Credit Unions

Table of Contents

Definitions

Branch.....	4
Business loan.....	5
Capital	
Consumer loan	
CUSO	
Membership share	
Net worth	
Operating officer	
Out-of-state credit union	
Senior operating officer (new term)	
Small credit unions (new term).....	6

Corporate Governance

Bylaw requirements.....	7
Articles of incorporation of new credit union	
Amendments to Articles	
Amendments to Bylaws	
Board vacancies	
Regular board meetings	
Automatic termination of director for absence	
Notice of automatic termination of director	
Operating officers and employees on board.....	8
Board duties – deletion of unnecessary wording	
Board duties - budgets	

Board duties – delegation of duties	
Fiduciary duties of officers	
Automatic termination of Supervisory Committee members for absence	
Notice of automatic termination of Supervisory Committee member	
Qualifications for Supervisory Committee members	
Supervisory Committee chair	
Vacancies on Supervisory Committee.....	9
Frequency of Supervisory Committee meetings	
Supervisory Committee duties	
Director compensation	
Loans to Supervisory and Credit Committee members	
Bond and insurance requirements	
Powers of Credit Unions	
Power of credit unions to sell insurance.....	10
Dormant account determination	
Parity powers	
Low-income credit unions	
Loans	
Loan rules.....	11
Preference for consumer loans	
Loans-to-one-borrower limit	
Investments	
Limit on investments-to funds in excess of loans.....	12
CUSO investments/loans	
Mergers, Conversions, and Voluntary Liquidations	
Discharge of debts in a merger of Washington Credit Unions.....	13
Effective date of mergers of Washington Credit Unions	
Mergers of Washington credit unions into federal, out-of-state or foreign credit unions	
Mergers of out-of-state, federal or foreign credit unions into Washington credit unions	
Foreign and out-of-state credit unions operating a branch in Washington	
Requirements for foreign and out-of-state credit unions to operate a branch in Washington	
FOM and deposit insurance requirements for foreign and out-of-state credit unions operating a branch in Washington	
Fee authority for out-of-state and foreign credit unions.....	14
Member approval of voluntary liquidation	
Examination and Supervision	
WCUSGA references.....	15
Director’s authority to require compliance	
Regulatory relief for small credit unions	
Requirements for non-federally insured credit unions	

Fee authority	
Director’s access to records and authority to revalue investments	
Director’s authority to require reserves or require charge-offs	
Director’s authority to examine and investigate certain parties	
Director’s access to books and records of out-of-state and foreign credit unions, and certain other parties	
Director’s authority to administer oaths and issue subpoenas.....	16
Reports	
Compliance with GAAP	
Notice of intent to operate branch	
Director’s removal authority	
Enforcement hearings	
Cease and desist (C&D) orders	
Temporary C&D orders	
Notice of permanent order	
Credit union action to enjoin temporary order	
Director action to enjoin violation of temporary order.....	17
Application of APA	
Other	
Corporate credit unions.....	18
Repealers	
Decodification of RCW 31.13.900.....	19
Severability provision	

DCU Summary of HB 1366 (Chapter 83, Laws of 2001)

Effective July 22, 2001

DCU's 2001 Departmental Request bill, HB 1366, took effect on July 22, 2001. The following is a summary of the significant revisions of the bill, identified by page and line number. A copy of the bill is also enclosed for your convenience.

Please note that the bill did not revise every section of the Credit Union Act, Chapter 31.12 RCW.

If you have questions about the provisions of the bill, please feel free to contact Parker Cann at the Division, at (360) 902-8778 or pcann@dfi.wa.gov.

Summary

Definitions

Page 2; lines 1-17: The definition of "branch."

We intended the changes to clarify, rather than change, the definition of "branch." A credit union's facility is not a branch unless it meets all three criteria set forth in subsection (3)(a), (b) and (c).

For example, an office or facility of Credit Union A is not a "branch" of Credit Union A unless all three of the following criteria are satisfied:

1. The facility is a staffed, physical facility. This rules out the Internet, the mail and the phone system as somehow constituting a branch. However, this criterion is satisfied whether or not the staff at the facility is staff of Credit Union A.
2. The facility is owned or leased in whole or in part by Credit Union A or its CUSO. An accommodation arrangement or other sharing arrangement between Credit Union A and another credit union to take deposits or allow withdrawals for Credit Union A's members at the other credit union's office or facility does not satisfy this criterion, unless Credit Union A or its CUSO leases the facility, in whole or in part.

3. Deposits and withdrawals may be made to/from Credit Union A, or shares purchased from Credit Union A, through staff at the facility. This rules out ATMs and other facilities where loans are originated but no deposit or share business is done in person. However, this criterion is satisfied whether or not the staff at the facility is staff of Credit Union A.

Page 2; lines 18-19: The definition of “business loan.”

The definition is no longer needed – the term is defined by Division rules. See WAC 208-460-010 (revised effective June 1, 2001).

Page 2; lines 21-23: The definition of “capital.”

The allowance is actually for loan and lease losses, and the changes reflect this fact.

The definition of capital has been amended to include other Director-approved forms of capital. However, until the National Credit Union Administration (NCUA) amends its Prompt Corrective Action (PCA) rules to include other forms of capital in the definition of net worth, such other forms of capital will not count as net worth for PCA purposes.

Page 2; lines 24-25: The definition of “consumer loan.”

The definition is no longer needed because the term has been deleted from Chapter 31.12 by the bill.

Page 2; line 31: The definition of “CUSO.”

For completeness, the changes add credit union service organizations (CUSOs) of foreign credit unions to the definition of a CUSO.

Page 3; lines 30-31: The definition of “membership share.”

The changes clarify the definition to reflect that credit union members are not required by statute to purchase a membership share.

Page 3; line 33: The definition of “net worth.”

The changes conform to the term used in the Federal Credit Union Act (FCUA) – “net worth.”

Page 3; lines 35-36: The definition of “operating officer.”

The changes clarify the definition of “operating officer.”

Page 4; line 6: The definition of “out-of-state credit union.”

The changes clarify the definition to include credit unions operating under the laws of US possessions.

Page 4; lines 11-13: A new defined term - “senior operating officer.”

The changes add this new definition. The fiduciary duties of senior operating officers are recognized by Section 9 of the bill.

Page 4; lines 14-15: A new defined term – “small credit unions.”

As defined, “small credit unions” are those with up to \$10 million in assets. Section 26(3) of the bill allows the Director to provide appropriate regulatory relief for small credit unions.

Corporate Governance

Page 5; line 11: Bylaw requirements.

The changes delete the requirement that the bylaws address duties of board officers. There is no compelling regulatory reason for such a requirement. Credit unions may decide in their discretion whether to spell out such duties in their bylaws. Of course, board officers will have duties normally associated with their office if they are not detailed in the bylaws.

Page 6; lines 6-9: Articles of incorporation of new credit union.

The changes give the Director greater discretion to give start-up credit unions extensions of time to begin conducting business.

Page 6; lines 15-22: Amendments to Articles.

The changes improve the organization of the section by moving a sentence up from the second subsection, and clarify that articles amendments take effect on filing by the secretary of state.

Page 6; lines 29-33: Amendments to Bylaws.

The changes clarify the wording in regard to board approval of bylaw amendments other than field of membership amendments, consistent with the section on articles amendments (see Section 4 of the bill).

Page 7; lines 13-17: Board vacancies.

The changes:

- Clarify that an interim director appointed to fill a vacancy created by expansion of the board will serve until the next annual meeting, consistent with Division interpretation.
- Make the section consistent with the section on supervisory committees (see Section 10 of the bill).

Page 7; lines 20-21: Regular board meetings.

The changes clarify the meaning of the term “regular board meetings.”

Page 7; lines 27-32: Automatic termination of director for absence.

The changes clarify the provision for automatic termination of a director. Unless excused, a director shall no longer serve if he or she misses 4 regular meetings in a 12 month period during the director’s term, consistent with Division interpretation. The changes are consistent with the section on supervisory committees (see Section 10 of the bill).

Page 7; lines 33-36: Notice of automatic termination of director.

The changes provide that the board secretary is responsible to provide notice to a director whose term is automatically terminated because of absence. The failure to provide notice does not affect termination. The changes are consistent with the supervisory committee provision in Section 10 of the bill.

Page 8; lines 4-7: Operating officers and employees on board.

The changes clarify that operating officers and employees cannot form a majority of the board, consistent with Division interpretation.

Page 8; lines 22-23: Board duties – deletion of unnecessary wording.

The changes delete unnecessary wording about automated loan approval programs. Of course, credit unions may still utilize automated loan approval programs.

Page 8; line 28: Board duties - budgets.

The two terms used in the prior wording of the section, “budget” and “financial plan,” were intended to encompass the same thing. “Budget” is the recognized term and should be used here. The Division appreciates that adequate budgets may vary in complexity, depending on the nature of a credit union’s operation.

Page 8; line 34: Board duties – delegation of duties.

The changes confirm that the board must carry out the duties listed in subsection (2) unless it has delegated them.

Page 9; lines 13 and 19: Fiduciary duties of officers.

The changes provide that senior operating officers, not just board officers, have fiduciary responsibilities, consistent with the common law and Division interpretation.

Page 9; lines 30-34: Automatic termination of Supervisory Committee members for absence.

The changes provide that supervisory committee members that miss over 1/3 of the committee meetings in a 12 month period during their term without being excused shall no longer serve on the committee. This is an automatic termination, consistent with the section on director absences (see Section 7 of the bill).

Page 9/lines 35-36 and page 10/lines 1-2: Notice of automatic termination of Supervisory Committee member.

The supervisory committee is responsible to provide notice to a committee member whose term is terminated because of absence. The failure to provide notice does not affect termination. This is consistent with the section on director absences (see Section 7 of the bill).

Page 10; lines 3-6: Qualifications for Supervisory Committee members.

The changes require supervisory committee members to be natural persons and members of the credit union, consistent with the section on directors (see Section 7 of the bill).

Page 10; lines 7-8: Supervisory Committee chair.

The changes provide that the chair of the supervisory committee cannot serve as an

officer of the board, in order to eliminate this type of conflict of interest.

Page 10; lines 11-13: Vacancies on Supervisory Committee.

The changes provide that interim supervisory committee members appointed to fill a vacancy created by expansion of the committee may serve until the next annual meeting, consistent with the section on director vacancies (see Section 6 of the bill).

Page 10; line 28: Frequency of Supervisory Committee meetings.

The changes delete unnecessary wording that the supervisory committee will meet as often as necessary.

Page 10; lines 31-34: Supervisory Committee duties.

The changes make the section consistent with preemptive NCUA rules on supervisory committee duties.

Page 11; line 9-11: Director compensation.

The changes improve the organization of the section and confirm Division interpretation that credit unions may provide insurance coverage for directors if the coverage is available to employees generally.

Page 11; line 16: Loans to Supervisory and Credit Committee members.

The changes limit the reach of these conflict of interest provisions, requiring loans to directors and supervisory and credit committee members to be on no more favorable terms and conditions than loans to members generally, consistent with Division rules at WAC 208-444-030.

Page 11; lines 21-29: Bond and insurance requirements.

The changes make the section consistent with preemptive NCUA insurance rules on bond coverage.

Powers of Credit Unions

Page 13; lines 1-8: Power of credit unions to sell insurance.

The changes allow credit unions to sell additional types of insurance to their members, if other state-chartered institutions can do so, subject to the same regulatory requirements. For example, see FDIC rules at 12 C.F.R. Part 343.

Page 13; line 11: Dormant account determination.

The changes eliminate the requirement that the board make the dormancy determination. There is no compelling regulatory reason for such a requirement. Credit union boards may decide in their discretion whether the board or an officer or employee should set policy on dormancy.

Page 13; lines 34-37 and page 14/lines1-19: Parity powers.

The changes:

- Provide parity with federal credit unions as of December 31, 1993, or a subsequent date no later than July 22, 2001. Credit unions may choose which date to use for parity purposes.
- Authorize the director to grant powers and authorities that federals have in the future (after July 22, 2001), upon a finding by the Director. The prior version of this section required the grant to be made through a rule making by the Director. The process of making a finding is more informal and expeditious.
- Add parity with out-of-state, state credit unions operating a branch in Washington, upon a finding by the Director. However, Washington credit unions must still have federal share insurance (or equivalent) under RCW 31.12.408, and are not granted the field of membership powers or authorities of out-of-state credit unions.

Page 14/lines 29-37 and page 15/lines 1-19: Low-income credit unions.

This new section 16 provides for the designation of low-income credit unions, subject to rules of the Director. The Section 16 criteria for such designation are less onerous than the NCUA criteria for such designation. Section 16 provides incentives for credit unions to seek such a designation – the ability to issue secondary capital, for example.

Loans

Page 15; line 26: Loan rules.

The changes make it clear that all loans, whether consumer or business loans, may be subject to rules of the Director. At the present time, the Director has adopted rules on member business loans (see Chapter 208-460 WAC), but has not adopted rules generally on other types of loans.

Page 15; lines 31-34: Preference for consumer loans.

The changes eliminate the preference for consumer loans and small consumer loans. It was not clear how the preference should be applied.

Page 16; lines 2-3: Loans-to-one-borrower limit.

The changes clarify the wording of the section – the loans-to-one-borrower limit applies to all types of loans.

Investments

Page 16; line 11: Limit on investments-to funds in excess of loans.

The changes eliminate ambiguous wording that limits investments to funds “in excess of loans.” It was not clear how the quoted phrase should be applied.

Page 17; lines 7-25: CUSO investments/loans.

The changes:

- Clarify that the investment/loan limit applies to the aggregate of investments in/loans to all CUSOs by a credit union.
- Clarify that the primary purpose of a CUSO must be to serve the CU industry or CU members.

Mergers, Conversions, and Voluntary Liquidations

Page 19; lines 5-7 Discharge of debts in a merger of Washington credit unions.

The changes clarify the discharge of debts in a merger of Washington credit unions.

Page 19; lines 11-15: Effective date of mergers of Washington credit unions.

Consistent with Division interpretation, the changes establish that when two Washington credit unions merge, the merger will be considered legally effective when:

- The 30 day creditor claim period and any other regulatory waiting periods have expired; and
- The Articles of Merger are filed by the Secretary of State.

Similar effective date provisions were added to Sections 22 and 23 of the bill, regarding:

- The merger or conversion of Washington credit unions into federal, out-of-state or foreign credit unions (Section 22 - see page 20/lines 1-6).
- The merger or conversion of federal, out-of-state or foreign credit unions into Washington credit unions (Section 23 - see page 20/lines 27-32).

Page 19; lines 18-35: Mergers of Washington credit unions into federal, out-of-state, or foreign credit unions.

The changes expand the section to cover Washington credit union mergers into federal, out-of-state, or foreign credit unions. The changes require the board secretary, rather than the board itself, to certify member approval of the transaction.

Page 20; lines 14-19: Mergers of out-of-state, federal or foreign credit unions into Washington credit unions.

The changes expand the section to cover mergers where an out-of-state, federal or foreign credit union is merging into a Washington credit union.

Page 21; lines 5-6: Foreign and out-of-state credit unions operating a branch in Washington.

The changes eliminate confusion between a foreign or out-of-state credit union “doing business” and “operating a branch” here and make it clear that the trigger for requiring prior Director approval is “operating a branch” in Washington.

Page 21; lines 9-37: Requirements for foreign and out-of-state credit unions to operate a branch in Washington.

The changes delete “applicant” and substitute “credit union,” because some of the requirements apply on an ongoing basis, not just at the time of application.

Page 21; lines 26-30: FOM and deposit insurance requirements for foreign and out-of-state credit unions operating a branch in Washington.

The changes confirm that out-of-state and foreign credit unions that operate a branch here are subject to:

- Washington’s field of membership laws; and

- Other Washington laws as determined by the Director.

Page 22; lines 32-34: Fee authority for out-of-state and foreign credit unions.

The wording is deleted because all of the Director's fee authority is consolidated in Section 26 of the bill.

Page 22; line 37: Member approval of voluntary liquidation.

The changes correct the error – the reference should be to a member meeting, not a board meeting.

Examination and Supervision

Page 24; lines 2, 12, 21 and 30: WCUSGA references.

The changes delete reference to Chapter 31.12A, the WCUSGA Chapter that was repealed on December 31, 2000.

Page 24; lines 4-7: Director's authority to require compliance.

The changes eliminate the mandate that the Director require credit unions to comply with applicable laws outside Chapter 31.12.

Page 24; lines 15-18: Regulatory relief for small credit unions.

The changes allow the Director to provide regulatory relief for small credit unions.

Page 24; lines 23-27: Requirements for non-federally insured credit unions.

The changes require nonfederally insured credit unions to comply with safety and soundness requirements of the Director.

Page 24; lines 29-31: Fee authority.

The changes clarify that the Director may charge fees to persons that may be examined or investigated by the Division (which includes EDP providers), and to parties that the Division contracts its services to (such as other Divisions or other agencies).

Page 25; lines 5-10: Director's access to records and authority to revalue investments.

The changes allow the Director access to credit unions' records, and allow the Director to revalue a credit union's investments. These changes are consistent with the state thrift and bank statutes.

Page 25; lines 11-12: Director's authority to require reserves or require charge-offs.

The changes authorize the Director to require credit unions to charge off or set up a special reserve for loans and investments. The wording is brought over from RCW 31.12.448 (repealed by Section 38 of the bill).

Note: The Division does not view this Section as an exhaustive list of the Director's powers to appraise or revalue, or require write-offs or reserves for, assets.

Page 25; lines 13-30: Director's authority to examine and investigate certain parties.

The changes allow the Director to examine and investigate certain credit union-affiliated parties, including EDP providers, as well as out-of-state and foreign credit unions permitted to operate a branch here.

Page 25; lines 31-33: Director's access to books and records of out-of-state and foreign credit unions, and certain other parties.

The changes allow the Director access to the records of out-of-state and foreign credit unions, and certain credit union-affiliated parties.

Page 25; lines 34-38 and page 26/lines 1-4: Director’s authority to administer oaths and issue subpoenas.

The changes allow the Director to administer oaths, issue subpoenas, and require the production of documents. The changes are consistent with the state thrift and bank statutes.

Page 28; lines 16-24: Reports.

The changes conform with practice – credit unions must file NCUA-required call reports with the Division.

Page 28; line 28: Compliance with GAAP.

The changes conform to the law - preemptive federal law requires credit unions with at least \$10 million in assets to comply with GAAP requirements.

Page 28; lines 35-36: Notice of intent to operate branch.

The changes limit the branch notice requirement to instances where the credit union intends to operate a branch in another state or foreign jurisdiction.

Page 29; lines 5-9: Director’s removal authority.

The changes clarify that the Director may remove an officer or employee from employment, and allow the Director to prohibit a person from participating in the affairs of any credit union. This enforcement authority is consistent with authority of other state and federal regulators. See, e.g., 12 U.S.C. 1786(g) (NCUA authority).

Page 29; lines 20-38 and page 30/lines 1-2: Enforcement hearings.

Certain subsections have been deleted in this and following sections to avoid inconsistency with the State Administrative Procedure Act, Chapter 34.05 RCW (APA). See page 30, lines 11-34; page 31, lines 16-21; page 32, lines 8-39; and page 33, lines 1-7. Another section of the bill (Section 35) makes it clear that the agency’s enforcement hearings are governed by the APA.

Page 30; lines 34-38: Cease and desist (C&D) orders.

The new wording is brought over from the last sentence of the deleted subsection (2) of this section.

Page 31; lines 5-11: Temporary C&D orders.

The changes clarify the nature of a temporary cease and desist order – that an order may require a credit union to do or not do something.

Page 31; lines 12-14: Notice of permanent order.

The changes clarify that the agency will serve notice of charges for a permanent cease and desist order at the same time it serves a temporary order.

Page 31; lines 23-28: Credit union action to enjoin temporary order.

The new wording is brought over from RCW 31.12.605 (repealed by Section 38 of the bill).

Page 31; lines 29-34: Director action to enjoin violation of temporary order.

The new wording is brought over from RCW 31.12.615 (repealed by Section 38 of the bill).

Page 31/lines 37-38 and page 32/lines 1-5: Application of APA.

The changes clarify that the agency's enforcement hearings are governed by the APA, except to the extent that Chapter 31.12 provides otherwise.

Other

Page 33/lines 10-37 and page 34/lines 1-31: Corporate credit unions.

Chapter 31.13 RCW governs Washington State-chartered corporate credit unions. There are currently no Washington State-chartered corporate credit unions.

Chapter 31.13 is very outdated. Sections 36 and 37 of the bill extensively revise two sections of the corporate Chapter. As amended, these sections permit the organization of a Washington corporate with the same powers as federal corporates and Kansas State corporates. The largest corporate in the nation is chartered by the State of Kansas, and Kansas State law provides detailed corporate credit union regulation. Section 39 of the bill repeals the remaining three sections of the Corporate Chapter.

Page 34; lines 34-35: Repeal of RCW 31.12.275.

RCW 31.12.275 provides that the board may remove board officers and committee members (other than supervisory committee members) only for cause. Because these officers and committee members are appointed by the board without a member vote, the “for cause” requirement is not appropriate. With the repeal, boards can make the determination to remove such officers and committee members as they see fit.

Page 34; lines 36-37: Repeal of RCW 31.12.407.

RCW 31.12.407 (Chapter 5, Section 5, Laws of 1996) requires credit unions to have federal insurance before December 31, 1998. After December 31, 1998, credit unions were required to have federal insurance or alternative insurance approved by the Director. See RCW 31.12.408. Consequently, RCW 31.12.407 is no longer effective and is repealed.

Page 35; lines 1-2: Repeal of RCW 31.12.445.

RCW 31.12.445 is deleted because the concept is addressed in Section 26 of the bill.

Page 35; lines 3-4: Repeal of RCW 31.12.448.

RCW 31.12.448 is repealed because:

- The Director retains safety and soundness authority outside of this section to require an appropriate liquidity reserve; and
- The substance of RCW 31.12.448(2) is moved to Section 27(2) of the bill.

Page 35; lines 5-6: Repeal of RCW 31.12.555.

RCW 31.12.555 is repealed because the substance of the section is moved to Section 27(3) of the bill.

Page 35; lines 7-9: Repeal of RCW 31.12.605.

RCW 31.12.605 is repealed because the wording of the section is moved to Section 34(4) of the bill.

Page 35; lines 10-11: Repeal of RCW 31.12.615.

RCW 31.12.615 is repealed because the wording of the section is moved to Section 34(5) of the bill.

Page 35; lines 12-13: Repeal of RCW 31.12.627.

RCW 31.12.627 is repealed to make it clear that these matters are governed by the APA.

Page 35; lines 16-20: Repeal of RCW 31.13.030, .040, .050.

These three outdated corporate credit union sections are repealed.

Page 35; line 21: Decodification of RCW 31.13.900.

RCW 31.13.900 is a severability provision from a 1977 bill, and is decodified.

Page 35; lines 22-25: Severability provision.

Standard severability provision.

Opinion index heading: Miscellaneous

Opinion index and list descriptor: Summary of HB 1366 (Chapter 83, Laws of 2001),
Effective July 22, 2001