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AB-2274 Credit unions. (2015-2016)

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Assembly Bill No. 2274

CHAPTER 353

An act to amend Sections 14103, 14252, 14453, 14456, 14550, 14804, 14950, 15050, and 15100 of, to add Section 14556 to, and to repeal Section 14951 of, the Financial Code, relating to credit unions.

[Approved by Governor September 14, 2016. Filed with Secretary of State September 14, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2274, Dababneh. Credit unions.

(1) The California Credit Union Law provides for the regulation of credit unions within the state by the Commissioner of Business Oversight. The law requires a credit union to be directed by a board of directors consisting of an odd number of directors, at least 5 in number, each of whom are a member of the credit union, to be elected by the members at their annual meeting. The law requires a credit union to have a supervisory committee of at least 3 persons, each of whom is a member of the credit union. The law authorizes the directors to delegate the approval of applications for new memberships to any officer, director, committee member, or employee pursuant to a written membership plan adopted by the board, provided the board reviews, at least quarterly, a report of membership applications approved by an officer, director, committee member, or employee.

This bill would require the board to meet on a regular basis, not less than quarterly, as reasonably determined by the board. The bill would require the membership of the supervisory committee to be an odd number and would authorize, in lieu of the requirement for a supervisory committee, the establishment of an audit committee and the selection of the members of the audit committee. The bill would remove the requirement for the directors to, at least quarterly, review a report of membership applications approved by an officer, director, committee member, or employee to whom the directors delegated the authority to approve applications for new membership.

(2) The California Credit Union Law prohibits an obligation with a member that is not a natural person and results in liability to the credit union in excess of that member's investment in the credit union unless an exception is authorized in the credit union's bylaws and approved by the commissioner. The law authorizes any lending activity permitted pursuant to this provision to be terminated by the commissioner pursuant to a specific procedure.

This bill would repeal this prohibition.

(3) The California Credit Union Law limits the circumstances when a nonmember may participate in an obligation or extension of credit to a member as a joint applicant or co-obligor.

This bill would include the terms coborrower, surety, and guarantor within these provisions.

(4) The California Credit Union Law limits a credit union from entering, directly or indirectly, into any obligation with an official, and defines that term to mean a director, officer, member of the supervisory committee, or member of the credit committee of a credit union.

This bill would modify that definition to remove the position of an officer, and to include the positions of a member of the audit committee, credit manager, president, and chief executive officer of a credit union.

(5) The California Credit Union Law requires any application for any loan or extension or guarantee of credit, except as specified, to state in writing the purpose for which the loan or extension or guarantee of credit is desired, and, if applicable, describe the property that is proposed to secure the loan or extension or guarantee of credit.

This bill would repeal this requirement.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14103 of the Financial Code is amended to read:

14103. The bylaws shall prescribe the manner in which the business of the credit union shall be conducted with reference to the following matters:

- (a) The purpose of the credit union.
- (b) The qualification for membership.
- (c) Determination of the month, time and place of the annual meeting; the manner of conducting meetings; the method by which members shall be notified of meetings; and the number of members which shall constitute a quorum.
- (d) The authorized number of directors, the number of directors necessary to constitute a quorum, and the powers and duties of officers elected by the directors.
- (e) The membership, powers, and duties of the supervisory or audit committee, as applicable.
- (f) The membership, powers, and duties of the credit committee or if applicable, the general powers, responsibilities and duties of the credit manager.
- (g) The manner in which the bylaws may be amended.

SEC. 2. Section 14252 of the Financial Code is amended to read:

14252. (a) A credit union with total assets equal to or greater than ten million dollars (\$10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(b) The audit report called for in subdivision (a) shall comply with all of the following provisions:

- (1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify, and any other information that the commissioner may specify.
- (2) The audit report shall be based upon an audit of the credit union, conducted in accordance with generally accepted auditing standards, and any other requirements that the commissioner may specify.
- (3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.
- (4) The audit report shall include, or be accompanied by, a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

(c) A credit union with total assets of less than ten million dollars (\$10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(d) The audit report called for in subdivision (c) may comply with all the provisions of subdivision (b), or may consist of alternative procedures acceptable to the commissioner. An alternative procedures audit may be performed by any of the following:

- (1) An independent certified public accountant.

(2) An independent public accountant.

(3) The credit union's supervisory or audit committee, as applicable, provided that the audit complies with the requirements of Section 14253.

(e) Notwithstanding subdivision (d), the commissioner may reject an alternative procedures audit that he or she determines is not satisfactory. If the commissioner rejects an alternative procedures audit for any reason, he or she may order a credit union to obtain an audit that is satisfactory to the commissioner.

(f) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

SEC. 3. Section 14453 of the Financial Code is amended to read:

14453. The board of directors of every credit union shall have the general management of the affairs, funds, and records of the credit union. The board shall meet on a regular basis, not less than quarterly, as reasonably determined by the board. The board may appoint an executive committee of no fewer than three directors, to serve at its pleasure, to act as expressly approved by the board of directors in accordance with the laws and regulations.

SEC. 4. Section 14456 of the Financial Code is amended to read:

14456. Unless the bylaws expressly reserve any or all of the following duties to the members, the directors have all of the following special duties:

(a) To act upon all applications for membership. The directors may delegate the power to approve applications for new membership to: (1) the chairperson of a membership committee or to an executive committee; or (2) any officer, director, committee member, or employee, pursuant to a written membership plan adopted by the board of directors.

(b) To expel members for any of the following causes:

(1) Conviction of a criminal offense involving moral turpitude.

(2) Failure to carry out contracts, agreements, or obligations with the credit union.

(3) Refusal to comply with the provisions of this division or of the bylaws.

Any members who are expelled by the board of directors have the right to appeal therefrom to the members, in which event, after hearing, the order of suspension may be revoked by a two-thirds vote of the members present at a special meeting to consider the matter.

(c) To determine from time to time the interest rate on obligations with members and to authorize the payment of interest refunds to borrowing members.

(d) To fix the maximum number of shares which may be held by, and, in accordance with Section 15100, establish the maximum amount of obligations which may be entered into with, any one member.

(e) To declare dividends on shares in accordance with the credit union's written capital structure policy and to determine the interest rate or rates which will be paid on certificates for funds.

(f) To amend the bylaws, except where membership approval is required.

(g) To fill vacancies in the credit committee, and to temporarily fill vacancies caused by the suspension of any or all members of the credit committee, pending a meeting of the members to determine whether to affirm the suspension and vacate the office, or to reinstate the member or members.

(h) To direct the deposit or investment of funds, except loans to members.

(i) To designate alternate members of the credit committee who shall serve in the absence or inability of the regular members to perform their duties.

(j) To perform or authorize any action not inconsistent with law or regulation and not specifically reserved by the bylaws for the members, and to perform any other duties as the bylaws may prescribe.

SEC. 5. Section 14550 of the Financial Code is amended to read:

14550. Every credit union shall have a supervisory committee of at least three persons, provided that the number of members on the committee is an odd number, each of whom shall be a member of the credit union and elected by the members of the credit union. In the alternative, the board of directors may establish an audit committee subject to the requirements of Section 14556.

SEC. 6. Section 14556 is added to the Financial Code, to read:

14556. (a) The board of directors may, by resolution, establish an audit committee in lieu of a supervisory committee. An audit committee that meets all the requirements of this section shall be deemed to satisfy the requirements for a supervisory committee set forth in Sections 14550 to 14555, inclusive, or in any applicable bylaw provision.

(b) The vote of the board of directors to establish an audit committee in lieu of a supervisory committee shall be affirmed by a majority vote of members voting. Following the affirmative vote of the membership, the supervisory committee shall be deemed dissolved upon the appointment of an audit committee by the board of directors.

(c) The audit committee shall consist of at least three persons, provided that it is an odd number, each of whom shall be a member of the credit union and appointed by a majority of the board of directors. The audit committee may be comprised of directors, or both directors and non-directors, provided that no less than a majority of the members of the audit committee at any given time shall be comprised of directors. No member of the audit committee shall serve as a member of the credit committee, as the credit manager, as the board chairman, or as an employee of the credit union.

(d) The audit committee shall carry out the responsibilities set forth in subdivision (c) of Section 14551 and Sections 14551.5 and 14553 and shall:

(1) Ensure that the credit union complies with Section 14252.

(2) Ensure that the credit union maintains an effective internal audit program, including a system of internal controls and individuals with sufficient training and experience to adequately and timely review all key areas of a credit union's operations.

(e) The board of directors may, by subsequent resolution, reestablish a supervisory committee in lieu of an audit committee, which shall be affirmed by membership vote. The audit committee shall be deemed dissolved upon the election of a supervisory committee by the membership.

SEC. 7. Section 14804 of the Financial Code is amended to read:

14804. The members of a credit union shall hold an annual meeting for the election of: (a) directors; (b) a supervisory committee, unless the board of directors has appointed an audit committee pursuant to Section 14556; and (c) a credit committee, if provided for in its bylaws. The annual meeting shall be held upon such notice and at such time and place as the bylaws provide.

SEC. 8. Section 14950 of the Financial Code is amended to read:

14950. (a) Every credit union may enter into obligations with its members upon the approval of the credit committee or, in the alternative, the credit manager, subject to the terms and conditions established by the board of directors pursuant to Section 15100.

(b) (1) The board of directors of a credit union shall adopt a policy governing the acceptance by the credit union of notes receivable from nonmembers as consideration for the sale of assets owned by the credit union through bona fide transactions.

(2) No credit union may accept notes receivable from nonmembers as consideration for the sale of assets owned by the credit union except in accordance with a policy adopted by the board of directors pursuant to paragraph (1).

(3) Transactions subject to this subdivision shall not be deemed to be loans to nonmembers for purposes of Section 14750.

(c) Notwithstanding subdivision (a), a credit union may permit a nonmember to participate in an obligation or extension of credit to a member as a joint applicant, co-obligor, coborrower, surety, or guarantor. An obligation or extension of credit made pursuant to this subdivision shall not be deemed a violation of subdivision (b) of Section 14800. Except as otherwise permitted by statute or regulation, the credit union shall not extend any other benefit or service of the credit union to the nonmember solely as a result of participation as a joint applicant, co-obligor, coborrower, surety, or guarantor unless the nonmember is thereafter admitted to membership.

SEC. 9. Section 14951 of the Financial Code is repealed.

SEC. 10. Section 15050 of the Financial Code is amended to read:

15050. (a) For purposes of this section, the following definitions shall apply:

(1) "Credit manager" means any individual, regardless of title, designated pursuant to Section 14600 to fulfill the duties of a credit manager.

(2) "Obligation" means any loan or approved line of credit, including both used and unused portions, on which the official is a borrower, coborrower, cosigner, endorser, or guarantor.

(3) "Official" means a director, member of the supervisory committee, member of the audit committee, member of the credit committee, credit manager, president, or chief executive officer of a credit union.

(b) No credit union shall enter into any obligation with any official, directly or indirectly, unless (1) the obligation complies with all lawful requirements of this division with respect to obligations permitted for other members of the credit union, (2) the obligation is not on terms more favorable than those extended to other members of the credit union, and (3) the obligation is entered into in accordance with a written policy adopted by the directors establishing that all officials shall have an equal opportunity to enter into obligations with the credit union.

(c) No credit union shall enter into any obligation with any official, directly or indirectly, unless all of the following requirements are satisfied:

(1) Upon the making of the obligation, the aggregate amount of obligations outstanding to all officials, except obligations fully secured by shares, shall not exceed 20 percent of the aggregate dollar amount of all savings capital of the credit union.

(2) The obligation, except any portion of an obligation fully secured by shares, shall not exceed the maximum obligation to the credit union set forth in subdivisions (b) and (c) of Section 15100.

(3) Any obligation that would cause the aggregate amount of obligations outstanding to the official to exceed fifty thousand dollars (\$50,000), excluding any portion fully secured by shares, shall be approved by the credit committee or the credit manager, and by the board of directors. An official shall not take part in any credit decision, directly or indirectly, for his or her benefit and shall not be present during any portion of any committee or board meeting where his or her credit application is under consideration.

(4) The names of members of the credit committee, the credit manager, and board of directors who voted to authorize or ratify the obligation shall be entered in their respective minutes.

(d) No credit union shall permit an official to become surety for any obligation created by the credit union for anyone other than a member of his or her immediate family.

(e) No credit union shall enter into any obligation with any credit manager or any officer employed by the credit union unless the obligation is in compliance with all requirements of this division with respect to obligations permitted for other nonemployee members, and not on terms more favorable than those extended to other employees, and approved by the board of directors.

SEC. 11. Section 15100 of the Financial Code is amended to read:

15100. (a) The board of directors shall establish written policies which shall set forth the policies of the credit union with respect to any obligation that is offered to the members of the credit union. The written policies shall set forth the maximum amounts and terms for any obligation offered to the members, including, but not limited to, the following information:

(1) For loans, the written policies shall set out the terms for unsecured loans, the maximum amount and terms for secured loans, the schedule of interest rates established pursuant to Section 15000 for each type or class of unsecured and secured loan offered to members, the maximum maturity for any loan, or, in the case of an open-end loan, the rate of repayment for any type or class of open-end loan, the limitations, if any, which shall be placed on the authority of any loan officer appointed pursuant to Sections 14602 and 14603, and, subject to the provisions of subdivisions (b) and (c), the individual limits on obligations that are applicable to all members of the credit union. Any policy developed pursuant to this section by the board of directors shall, insofar as possible, and, subject to individual creditworthiness, ensure equal access to funds available for obligations with credit union members.

(2) For obligations other than those set out in paragraph (1), the board of directors shall set out the interest rates and essential terms of the obligations offered to the members and any other information as may be required pursuant to regulations that may be adopted by the commissioner.

(b) Notwithstanding subdivision (a), no credit union policy shall permit a credit union to enter into obligations with an individual credit union member whereby the total obligations of that member, exclusive of amounts secured by shares or certificates for funds, exceed 10 percent of the aggregate dollar amount of the credit union's savings capital.

(c) Notwithstanding subdivision (b), no credit union policy shall permit a credit union to enter into obligations with any one family whereby the total obligations of the family would be greater than the amount permitted by subdivision (b). For purposes of this

article, "family" means the marital couple or any head of household together with those dependents residing with the marital couple or the head of household and those dependents attending school away from the principal residence of the marital couple or head of household.