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AB-2862 Credit unions: investments and exemptions. (2017-2018)

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Assembly Bill No. 2862

CHAPTER 267

An act to amend Sections 14400, 14456, 14807, 14900, 14959, and 17006 of, to add Sections 14657 and 14659 to, and to repeal Section 14862 of, the Financial Code, relating to credit unions.

[Approved by Governor September 05, 2018. Filed with Secretary of State September 05, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2862, Limón. Credit unions: investments and exemptions.

(1) The California Credit Union Law provides for the regulation of credit unions by the Commissioner of Business Oversight. This law permits a credit union to make certain investments, including, among others, investing in securities and other specified assets and investments authorized by the commissioner. Under existing law, except as otherwise provided, a willful or knowing violation of this law is a crime.

This bill would authorize a credit union to invest in charitable donation accounts or CDAs, which would be a hybrid charitable and investment vehicle satisfying specified conditions. The bill would specify that if a credit union invests in a CDA that satisfies these conditions, then it is not restricted by other investment limitations on credit unions. The bill, among other conditions, would limit the book value of a credit union's investments in all CDAs to no more than 5% of the credit union's net worth, would require the assets of a CDA to be held in a segregated custodial account or special purpose entity, and would require the credit union to distribute a minimum of 51% of the account's total return on assets over a 5-year period to qualified charities, as specified.

The bill would also authorize a credit union that is investing to fund an employee benefit plan obligation to purchase an investment that otherwise would be impermissible if the investment is directly related to the credit union's obligation or potential obligations under the employee benefit plan and the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

Existing law authorizes a credit union to participate in loans made to its members jointly with other credit unions, corporations, or financial organizations. Existing law also permits a credit union to participate in a loan originated by another credit union, which is made to a member of the originating credit union even though the member is not also a member of the credit union participating in the loan.

This bill would instead authorize a credit union to purchase and sell loans made to its members from any source. The bill would also authorize a credit union to purchase a loan originated by another credit union, made to a member of the originating credit union, even though the member is not a member of the credit union purchasing the loan. The bill would also permit a credit union to purchase a loan from any source if the purchase will facilitate the purchasing credit union's packaging of a pool of loans to be sold or pledged on the secondary market.

Existing law requires the board of directors of a credit union to establish a written savings capital structure policy that sets out the various terms and conditions upon which credit union shares may be issued, paid for, transferred, and withdrawn. Existing law authorizes the board of directors to declare dividends according to the intervals, formula, and periods provided in the policy. Existing law also requires that the savings capital of a credit union consist of the payments made by members on shares as set forth in the savings capital structure policy.

This bill would eliminate those provisions and make related conforming changes.

To the extent that the bill would expand the scope of a crime under the California Credit Union Law, the bill would impose a state-mandated local program.

(2) The Escrow Law provides for the licensure and regulation of escrow agents by the Commissioner of Business Oversight. This law exempts from its provisions any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies, among others.

This bill would also exempt credit unions from that law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 14400 of the Financial Code is amended to read:

14400. The equity capital of the credit union shall consist of the credit union's regular reserve account, the undivided earnings account, any appropriated undivided earnings accounts, and other forms of capital approved by the commissioner.

SEC. 2. 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 policies 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. 3. Section 14657 is added to the Financial Code, to read:

14657. (a) A credit union may invest in charitable donation accounts, or CDAs, in accordance with this section as a means of providing charitable contributions and donations to qualified charities. If a credit union invests in a CDA that satisfies all of the conditions in subdivision (b), then it may do so free from any other investment limitations of this article.

(b) (1) The book value of a credit union's investments in all CDAs, in the aggregate, as carried on the credit union's statement of financial condition prepared in accordance with generally accepted accounting principles, shall be limited to no more than 5 percent of the credit union's net worth at all times for the duration of the accounts, as measured every quarterly call report cycle. A credit union shall bring its aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

(2) The assets of a CDA shall be held in a segregated custodial account or special purpose entity and shall be specifically identified as a CDA.

(3) If a credit union chooses to establish a CDA using a trust vehicle, the trustee shall be regulated by a federal regulatory agency, or a state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, shall be either: (A) a registered investment adviser; or (B) regulated by a federal regulatory agency or a state financial regulatory agency.

(4) The parties to the CDA, typically the funding credit union and trustee or other manager of the account, shall document the terms and conditions controlling the account in a written agreement. The terms of the agreement shall be consistent with this section. The board of directors shall adopt written policies governing the creation, funding, and management of a CDA that are consistent with this section, shall review the policies annually, and may amend the policies from time to time. A credit union's CDA agreement and policies, at a minimum, shall comply with all of the following:

(A) Provide that the CDA shall make charitable contributions and donations only to qualified charities.

(B) Document the investment strategies and risk tolerances the CDA trustee or other manager is required to follow in administering the account.

(C) Provide that the credit union shall account for all aspects of the CDA, including, but not limited to, distributions to charities and liquidation of the account, in accordance with generally accepted accounting principles.

(D) Indicate the frequency with which the trustee or manager of the CDA shall make distributions to qualified charities, as provided in paragraph (5).

(5) A credit union shall distribute to one or more qualified charities, at least once every five years, and upon termination of a CDA, regardless of the length of its term, a minimum of 51 percent of the account's total return on assets over the period of up to five years. Other than upon termination, the credit union may choose how frequently CDA distributions to charity shall be made during each period of up to five years. The credit union may choose to make periodic distributions over a period of up to five years, or only a single distribution as required at the end of that period. A credit union may choose to donate in excess of the minimum distribution frequency and amount.

(6) Upon termination of the CDA, the credit union may receive a distribution of the remaining account assets in cash or a distribution in kind of the remaining account assets, but only if those assets are permissible investments for credit unions.

(c) For purposes of this section, the following definitions apply:

(1) "Affiliate" means an entity in which the credit union has any ownership interest directly or indirectly. "Affiliate" does not apply to ownership due to the funding of employee benefits.

(2) "Charitable contributions and donations" are gifts credit unions provide to assist qualified charities through contributions of staff, equipment, money, or other resources.

(3) "Charitable donation account" or "CDA" is a hybrid charitable and investment vehicle that satisfies the conditions set forth in subdivision (b).

(4) "Distribution in kind" means the credit union's acceptance of remaining CDA assets, upon termination of the account, in their original form instead of in cash resulting from the liquidation of the assets.

(5) "Qualified charity" means a charitable organization or other nonprofit entity recognized as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(6) "Registered investment adviser" means an investment adviser registered with the Securities Exchange Commission pursuant to the Investment Advisers Act of 1940.

(7) "Total return" means the actual rate of return on all investments in a CDA over a given period of up to five years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses provided they were not paid to the credit union that established the CDA or to any of its affiliates.

SEC. 4. Section 14659 is added to the Financial Code, to read:

14659. (a) A credit union that is investing to fund an employee benefit plan obligation may purchase an investment that would otherwise be impermissible if the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan and the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

(b) For purposes of this section, specific authorization pursuant to Section 14653.5 is not required.

SEC. 5. Section 14807 of the Financial Code is amended to read:

14807. Any member may withdraw from membership in the credit union at any time. A withdrawing member may be required to give 60 days' notice of intention to withdraw shares and 30 days' notice of intention to withdraw certificates for funds except when a different period of notice is required by the commissioner for the withdrawal of shares or share certificates that may be established by the board of directors.

SEC. 6. Section 14862 of the Financial Code is repealed.

SEC. 7. Section 14900 of the Financial Code is amended to read:

14900. Dividends need not be paid on a share account having less than the minimum balance prescribed in the bylaws.

SEC. 8. Section 14959 of the Financial Code is amended to read:

14959. (a) A credit union may do either or both of the following:

(1) Purchase, in whole or in part, from any source, loans made to its members.

(2) Sell, in whole or in part, to any source, loans made to its members.

(b) A credit union may purchase, in whole or in part, either or both of the following:

(1) A loan originated by another credit union, which is made to a member of the originating credit union even though the member is not also a member of the credit union purchasing the loan.

(2) A loan from any source, if the purchase will facilitate the purchasing credit union's packaging of a pool of those loans to be sold or pledged on the secondary market.

(c) A loan purchase that is authorized by this section shall not be an obligation with a nonmember within the meaning of Section 14750.

SEC. 9. Section 17006 of the Financial Code is amended to read:

17006. (a) This division does not apply to:

(1) Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, credit unions, or insurance companies.

(2) Any person licensed to practice law in California who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.

(3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

(4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those persons shall not delegate any duties other than duties performed under the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more than one business.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.