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SB-269 Credit unions. (2021-2022)

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Senate Bill No. 269

CHAPTER 762

An act to amend Sections 14250, 14409, 14410, 14456, 14556, 14807, 14811, 14851, and 15050 of, and to repeal Section 14655 of, the Financial Code, relating to financial institutions.

[Approved by Governor October 09, 2021. Filed with Secretary of State October 09, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 269, Portantino. Credit unions.

The California Credit Union Law (CCUL) provides for the licensure and regulation of credit unions by the Commissioner of Financial Protection and Innovation and makes a willful violation of that law a crime. The law prohibits a member of the board of directors, supervisory committee, or credit committee from receiving compensation for services as a member of the board of directors or those committees, subject to an exception for reasonable health, accident, and similar insurance and specified expense reimbursement. Existing law requires credit unions to obtain a bond or insurance coverage for each director, officer, supervisory committee member, and employee, among others, of the credit union.

This bill would prohibit a member of the audit committee from receiving compensation for services as a member of those committees. The bill would require credit unions to obtain a bond or insurance coverage for an audit committee member.

The Nonprofit Mutual Benefit Corporation Law prohibits a credit union from expelling a member without providing that member a fair and reasonable process, as specified. The CCUL authorizes the board of directors of a credit union to expel a member for specified causes, including conviction for a criminal offense involving moral turpitude, unless the bylaws of the credit union expressly reserve that duty to members and entitles an expelled member to appeal the expulsion to the members, as specified. Existing law authorizes the board of directors to delegate the power to expel members to the chairperson of a membership committee or an executive committee, as specified.

This bill would authorize the board of directors to expel a member for abusive, threatening, or harassing behavior toward credit union staff, volunteers, or members, or the abuse of credit union systems or property and would authorize that expulsion to take effect immediately and without advance notice or an opportunity to be heard, if the board of directors or its designee determines that immediate expulsion is reasonably necessary for the protection of the credit union or its staff, volunteers, or members. The bill would require a member expelled in that manner be provided written notice within 5 days after the effective date of that expulsion and would entitle the member, and a member expelled by the board of directors for any of the other specified causes, to appeal that expulsion to the board of directors pursuant to reasonable procedures adopted by the board that meet a certain minimum standard. The bill would define a membership committee for purposes of acting on applications for new membership and expelling members for cause. The bill would provide that this process is fair and reasonable for purposes of the Nonprofit Mutual Benefit Corporation Law.

Existing law authorizes the board of directors of a credit union to establish an audit committee in lieu of a supervisory committee, and an audit committee that meets specified requirements is deemed to satisfy certain provisions relating to a supervisory committee. Existing law prescribes procedural requirements for the establishment of an audit committee, prescribes requirements for its membership, and requires that an audit committee carry out specified responsibilities.

This bill would prescribe the means by which a membership vote for establishing an audit committee may be satisfied and additional requirements for the subsequent dissolution of a supervisory committee. The bill would authorize an audit committee member to be appointed or removed by the board of directors, as specified, and would authorize the Commissioner of Financial Protection and Innovation to direct removal of audit committee members, as specified. The bill would identify additional responsibilities for an audit committee.

The CCUL authorizes a credit union to purchase a promissory note upon which a member is the primary obligor, authorizes a credit union to issue shares to specified entities, and prohibits a credit union from entering into any loan or approved line of credit, including both used and unused portions, on which the official is a borrower, cosigner, endorser, or guarantor with an official, as defined, of the credit union.

This bill would revise and recast those provisions, including by repealing the authorization to purchase a promissory note upon which a member is the primary obligor and would authorize a credit union to issue shares to a member or nonmember state or federal credit union.

The CCUL authorizes a member to withdraw from membership in the credit union at any time, as specified, and authorizes a credit union to transfer a member who has no outstanding obligations with the credit union and whose share account is below the amount established by the bylaws to inactive status.

This bill would authorize a credit union to deem an inactive member to have withdrawn from membership, subject to specified notice and other conditions.

By expanding the scope of the crime of willfully violating the provisions of the CCUL, this bill would create a state-mandated local program.

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 14250 of the Financial Code is amended to read:

14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, files, and any office within or outside of this state used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of a credit union referred to in paragraph (1).

(3) The officers and employees of a credit union being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise cooperate with the examination so far as it is in their power.

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) For purposes of this subdivision, an examination made by the National Credit Union Administration pursuant to an alternating examination schedule approved by both the commissioner and the National Credit Union Administration is deemed to be an examination made by the commissioner.

(4) This subdivision does not require the commissioner to make an examination onsite at the offices of a credit union.

SEC. 2. Section 14409 of the Financial Code is amended to read:

14409. (a) Every credit union shall obtain adequate bond or insurance coverage, for each director, officer, supervisory committee member, audit committee member, and credit committee member, for the credit manager, and for each employee.

(b) The commissioner may adopt regulations setting forth guidelines with respect to the minimum amount of the bond or insurance coverage deemed adequate. The regulations may be based upon the gross assets of the credit union and may contain a formula or schedule for the calculation of minimum bond or insurance coverage.

SEC. 3. Section 14410 of the Financial Code is amended to read:

14410. (a) (1) A member of the board of directors, supervisory committee, audit committee, or credit committee shall not receive compensation for that member's services as a member of the board of directors, supervisory committee, audit committee, or credit committee, but the member may be provided with reasonable health, accident, and similar insurance.

(2) This subdivision does not prohibit a member of the board of directors, supervisory committee, audit committee, or credit committee from receiving nonmonetary compensation that is incidental to the person's service as a member of the board of directors, supervisory committee, audit committee, or credit committee, if and as approved by regulation or order of the commissioner.

(b) Notwithstanding subdivision (a), a director or committee member may be reimbursed for actual expenses incurred in the performance of that person's duties if reimbursement is made pursuant to the requirements of the commissioner's regulations controlling expense reimbursement by the credit union. Reimbursement for actual expenses may include, among other things, travel expenses incurred on or relating to credit union businesses and any other matters, categories, or items of expense that the commissioner establishes by regulation.

(c) This section shall not prevent any person from receiving compensation for actual services as a general manager, credit manager, loan officer, or other position as an employee of the credit union.

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 either of the following, pursuant to a written membership plan adopted by the board of directors:

(1) The chairperson of a membership committee or an executive committee.

(2) An officer, director, committee member, or employee.

(b) (1) To expel members for any of the following causes, subject to Section 14801:

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

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

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

(D) Abusive, threatening, or harassing behavior toward credit union staff, volunteers, or members, or the abuse of credit union systems or property.

(2) The directors may delegate the power to expel members for cause to a membership committee or an executive committee, pursuant to a written membership plan adopted by the board of directors.

(3) (A) An expulsion pursuant to subparagraph (D) of paragraph (1) may take effect immediately, without advance notice or an opportunity to be heard, if the board of directors, or its designee pursuant to subdivision (b), determines that immediate expulsion is reasonably necessary for the protection of the credit union or its staff, volunteers, or members.

(B) A member expelled pursuant to subparagraph (A) shall be provided written notice within five business days after the effective date of that expulsion.

(C) This paragraph shall not prohibit a member expelled pursuant to subparagraph (A) from appealing that expulsion pursuant to paragraph (4).

(D) An expulsion pursuant to this paragraph shall be deemed to be fair and reasonable pursuant to Section 7341 of the Corporations Code.

(4) (A) A member who is expelled by the board of directors, or its designee, has the right to appeal therefrom to the board of directors, pursuant to reasonable procedures adopted by the board.

(B) For purposes of this paragraph, "reasonable procedures" shall include, but not be limited to, all of the following:

(i) Written notice to the expelled member of the effective date of the expulsion.

(ii) The right to appeal therefrom and the procedures for doing so.

(iii) Written notice of the board's final determination following an appeal.

(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 that 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 that 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 prescribe.

(k) For purposes of this section, "membership committee" means a committee of at least three persons appointed by the board of directors, provided that the number of members on the committee is an odd number, each of whom shall be a member of the credit union. Notwithstanding any other law, a membership committee may be composed of directors, nondirectors, or both directors and nondirectors. No member of the supervisory committee or audit committee may serve on the membership committee.

SEC. 5. Section 14556 of the Financial Code is amended 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. A membership vote may occur at any regular or special meeting of the members, or by written ballot subject to Section 7513 of the Corporations Code. Following the affirmative vote of the membership, the supervisory committee shall be deemed dissolved upon the appointment of an audit committee and the adoption of appropriate amendments to the credit union bylaws, consistent with subdivision (e) of Section 14103, 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.

(1) Notwithstanding the limitations of subdivision (b) of Section 7212 of the Corporations Code, the audit committee may be composed of directors, or both directors and nondirectors, provided that no less than a majority of the members of the audit committee at any given time shall be composed of directors.

(2) A member of the audit committee shall not serve as a member of the credit committee, as the credit manager, as the board chairman, or as an employee of the credit union.

(3) An audit committee member may be appointed or removed by a majority vote of the board of directors and shall serve at the pleasure of the board. The removal of an audit committee member who is also a director of the credit union, for any reason, shall not impact their status as a director.

(4) The commissioner, after investigation and finding that the audit committee is not performing in conformance with this article, may direct the board to replace any or all audit committee members.

(d) The audit committee shall carry out the responsibilities set forth in subdivisions (a) to (c), inclusive, of Section 14551 and Sections 14551.5, 14552, 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. 6. Section 14655 of the Financial Code is repealed.

SEC. 7. Section 14807 of the Financial Code is amended to read:

14807. (a) A 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.

(b) A member who fails to take steps necessary to be removed from inactive status pursuant to Section 14811 may be deemed to have voluntarily withdrawn from credit union membership.

(c) A member whose funds have been remitted to the Controller's office for purposes of escheat consistent with Section 1513 of the Code of Civil Procedure shall be deemed to have voluntarily withdrawn from membership.

SEC. 8. Section 14811 of the Financial Code is amended to read:

14811. (a) A member who has no outstanding obligations with the credit union and whose share account is below the amount established by the bylaws may be transferred to inactive member status.

(b) An inactive member has no voting rights, has no right to notice of meetings of members, shall not be considered a member for purposes of determination of a quorum or a required vote and need not be sent the annual report or financial statements except upon request.

(c) When one or more of the conditions in subdivision (a) cease to be applicable, an inactive member may be transferred back to regular member status.

(d) (1) A member who remains on inactive status for a period of at least 90 days after written notice from the credit union may be deemed to have voluntarily withdrawn from credit union membership.

(2) The written notice referred to in paragraph (1) shall notify the member of, at a minimum, all of the following:

(A) That the member has been transferred to inactive status.

(B) The steps that the member may take to be transferred back to regular member status.

(C) That failure to take the steps necessary to be transferred back to regular member status within 90 days, or another period of time in excess of 90 days that the credit union specifies in its bylaws, will be deemed a voluntary withdrawal from credit union membership.

SEC. 9. Section 14851 of the Financial Code is amended to read:

14851. (a) A credit union may issue shares as follows:

(1) To a member qualified pursuant to the credit union's bylaws.

(2) To an officer, employee, or agent of nonmember units of federal, Indian tribal, state, or local governments, and political subdivisions thereof, when acting in that officer's, employee's, or agent's official capacity.

(3) To a member or nonmember state or federal credit union.

(4) (A) In coownership to a member and a person designated by the member.

(B) As used in this paragraph, coownership includes, but is not limited to, joint tenancy, tenancy in common, or community property forms of ownership.

(b) Membership privileges, including voting and obtaining a loan, may not be made available to a nonmember as a result of ownership of shares solely as a coowner of shares with a member. A certificate or other evidence of shares that is issued shall contain the words "No transfer of voting rights or other membership privilege is permitted by virtue of a transfer of shares." Shares may be transferred to a public agency lawfully entitled to receive the shares when designated by a member as an assignee of an account pledged as a surety deposit to the public agency by the member.

(c) A credit union that has a low-income designation pursuant to Section 701.34 of the regulations of the National Credit Union Administration (12 C.F.R. Sec. 701.34) may issue shares to nonmembers. Except with the written approval of the commissioner, the total number of shares issued by the credit union to nonmembers pursuant to this subdivision shall not exceed 20 percent of the unimpaired capital and surplus of the credit union.

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) "Officer" means an officer, as described in Section 14500, that is employed by the credit union.

(4) "Official" means a director, member of the supervisory committee, member of the audit committee, or member of the credit committee of a credit union.

(b) A credit union shall not enter into any obligation with any official, directly or indirectly, unless all of the following apply:

(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.

(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) A credit union shall not 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 the official's benefit and shall not be present during any portion of any committee or board meeting where the official's 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) A credit union shall not permit an official to become surety for any obligation created by the credit union for anyone other than a member of the official's immediate family.

(e) A credit union shall not 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. 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.