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AB-2062 Credit unions. (2023-2024)

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Assembly Bill No. 2062

CHAPTER 305

An act to amend Sections 14400, 14406, 14456, 14651, 14765, 14766, 14804, 14805, 15050, and 15100 of the Financial Code, relating to credit unions.

[Approved by Governor September 20, 2024. Filed with Secretary of State September 20, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2062, Grayson. Credit unions.

(1) Existing law, the California Credit Union Law, provides for the regulation of credit unions by the Commissioner of Financial Protection and Innovation, and specifies requirement for the management and operation of credit unions. Existing law specifies the manner of deposit for the savings capital of a credit union, prohibits a credit union from entering into an obligation with any official that exceeds 20% of the aggregate dollar amount of all savings capital, and prohibits a credit union policy from permitting a credit union to enter into obligations with a member where the total obligations of the member exceeds 10% of the aggregate dollar amount of the credit union's savings capital. A willful violation of the California Credit Union Law is a crime.

This bill would define "savings capital" for purposes of those provisions.

(2) Existing law grants specified powers to the board of directors of a credit union, including the power to approve new membership, determine the interest rate on obligations with members, and declare dividends on shares and determine the interest rate paid on certificates for funds.

This bill would authorize the directors or their delegates to utilize an automated system to be used to establish membership eligibility pursuant to a written membership plan adopted by the board of directors if specified conditions are met, including that the automated system is regularly tested for compliance with specified provisions, including the credit union's field of membership, and applicable laws and regulations. The bill would authorize the board to delegate specified duties to an asset-liability management committee or similar committee, including the duty to determine the interest rate on obligations with members, declare dividends on shares and determine the interest rate paid on certificates for funds, and determine the dividend rates on share accounts, as specified.

(3) Existing law authorizes a credit union to invest in the shares of stock of a corporation or limited liability company organized for the purposes of providing services to credit unions, provided the corporation or limited liability company is formed by a credit union.

This bill would also authorize a credit union to invest in those entities if the corporation or limited liability company is formed by a corporation or limited liability company organized solely for the purpose of providing services to credit unions pursuant to the above specified provisions. The bill would define "credit union service organization."

(4) Existing law prohibits an officer, director, or employee of a credit union from purchasing, or being interested in the purchase of, the credit union's assets for an amount less than their current market value. Existing law makes a person who violates that provision liable for each offense in a specified amount.

This bill would revise the amount for which the person is liable. The bill would authorize a method for determining market value and would exclude from those prohibitions certain gifts from a credit union and the purchase of certain equipment or furnishings by an officer or director.

(5) Existing law prohibits an officer, director, or employee of a credit union from purchasing, or being interested in the purchase of, the credit union's obligations for an amount less than their book value, unless specified requirements are met. Existing law makes a person who violates those provisions liable for each offense in a specified amount.

This bill would revise the amount for which the person is liable. The bill would set forth a method for determining book value.

(6) Existing law requires the members of a credit union to hold an annual meeting for the election of directors and certain committees and authorizes special meetings of members to be held upon order of the board of directors in accordance with specified notice and other requirements.

This bill would authorize those meetings to be conducted by remote communication, as specified.

By expanding the scope of a crime, the bill would impose 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 14400 of the Financial Code is amended to read:

14400. (a) 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.

(b) The savings capital of a credit union shall consist of the payments made by members on shares.

SEC. 2. Section 14406 of the Financial Code is amended to read:

14406. The savings capital, as defined in Section 14400, undivided profits, and reserve funds of a credit union shall be deposited only in the following:

(a) Commercial banks or trust companies, incorporated under the laws of this state.

(b) National banks doing business in this state.

(c) Shares or periodic certificates for funds received by or any form of evidence of interest or indebtedness issued by any credit union organized under this division or by any other credit union if its member accounts are insured as provided for by Subchapter II of the Federal Credit Union Act (12 U.S.C. Sec. 1781 et seq.), or, alternatively, are insured by other means determined acceptable by the commissioner.

(d) Accounts with, investment certificates or withdrawable shares of, any savings and loan association doing business in this state that is an insured institution pursuant to the Federal Deposit Insurance Corporation Act (12 U.S.C. Sec. 1811 et seq.).

SEC. 3. 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) (1) 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:

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

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

(2) The directors or their delegates may utilize an automated system to establish membership eligibility pursuant to a written membership plan adopted by the board of directors if all of the following conditions are met:

(A) The automated system is regularly tested for compliance with Section 14800, the credit union's field of membership, and applicable laws and regulations.

(B) An application for new membership approved using an automated system is reviewed by the directors or their delegates within five business days to ensure compliance with subparagraph (A).

(C) The written membership plan includes a plan to address an approved application determined not to be in compliance with subparagraph (A).

(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. The board of directors may delegate this duty pursuant to subdivision (l).

(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. The board of directors may delegate this duty pursuant to subdivision (l).

(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.

(l) (1) The board of directors may, by resolution, delegate the following to an asset-liability management committee or similar committee, consistent with the policies of the board of directors:

(A) The duties set forth in subdivisions (c) and (e).

(B) The authority to determine the dividend rates on share accounts pursuant to subdivision (b) of Section 14901.

(2) The asset liability management committee or similar committee may be composed of directors, nondirector management officials, or both directors and nondirector management officials.

(3) The asset liability management committee or similar committee shall provide a report to the board of directors, at least monthly, that specifies any actions taken.

SEC. 4. Section 14651 of the Financial Code is amended to read:

14651. (a) Every credit union may invest in the shares of stock of a corporation, or in membership or economic interests of a limited liability company, organized solely for the purpose of providing services to credit unions, provided the corporation or limited liability company is formed by a credit union or group of credit unions.

(b) Every credit union may invest in the shares of stock of a corporation, or in membership or economic interests of a limited liability company, organized solely for the purpose of providing services to credit unions, provided the corporation or limited liability company is formed by one or more credit unions, one or more corporations or limited liability companies of the type described in subdivision (a), or any combination thereof.

(c) Every credit union may invest in the securities of a corporation or in membership or economic interests of a limited liability company that is not a corporation or limited liability company of the type described in subdivision (a) and that provides services to credit unions, provided the investment is approved by the commissioner.

(d) "A credit union service organization" means a corporation or limited liability company described in subdivision (a) or (b).

SEC. 5. Section 14765 of the Financial Code is amended to read:

14765. (a) An officer, as described in Section 14500, a director, or an employee of a credit union shall not purchase, directly or indirectly, or be interested in the purchase of, any of the credit union's assets for an amount less than the then current market value. Every person who violates this section shall be liable to the people of this state for each offense in an amount of up to twice the market value of the assets purchased.

(b) In calculating the market value of an asset, the credit union may use the average value of two valuations of the asset from two separate third parties recognized in the industry for establishing market value in connection with a private-party purchase and sale of comparable assets.

(c) This section shall not apply to the purchase of used credit union equipment or furnishings by an officer or director if the current market value of the asset or assets purchased does not exceed five hundred dollars (\$500) in the aggregate.

(d) This section shall not be construed to prohibit the credit union from making a gift to an officer or director if the current market value of the gift or gifts does not exceed five hundred dollars (\$500) in the aggregate.

SEC. 6. Section 14766 of the Financial Code is amended to read:

14766. (a) An officer, as described in Section 14500, a director, or an employee of a credit union shall not purchase, directly or indirectly, or be interested in the purchase of, any of the credit union's obligations for an amount less than the book value thereof,

unless all the directors of the credit union previously approve the purchase by resolution and a copy of the resolution is delivered to the commissioner immediately after adoption. Every person who violates this section shall be liable to the people of this state for each offense in an amount of up to twice the book value of the obligations purchased.

(b) The method used for determining book value shall be set forth in a written policy governing the sale of credit union obligations established and approved by the board of directors. The method used shall be consistent with generally accepted accounting principles.

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

14804. (a) (1) The members of a credit union shall hold an annual meeting for the election of all of the following:

(A) Directors.

(B) A supervisory committee, unless the board of directors has appointed an audit committee pursuant to Section 14556.

(C) A credit committee, if provided for in its bylaws.

(2) An annual meeting required by this subdivision shall be held at a time and place, and upon notice, as the bylaws provide.

(b) Unless prohibited by the articles or bylaws of the credit union, a regular or special meeting of the members, including an annual meeting, may be conducted, in whole or in part, by means of remote communication as set forth in subdivision (f) of Section 7510 of the Corporations Code.

SEC. 8. Section 14805 of the Financial Code is amended to read:

14805. (a) Special meetings of members may be held upon order of the board of directors. Special meetings of members shall be held upon the written request of 10 members or 3 percent of the membership, whichever is greater. Notice of special meetings shall be given to all members specifying the date, time, place, and purpose of the meeting.

(b) Unless prohibited by the articles or bylaws of the credit union, a regular or special meeting of members, including an annual meeting, may be conducted, in whole or in part, by means of remote communication as set forth in subdivision (f) of Section 7510 of the Corporations Code.

SEC. 9. Section 15050 of the Financial Code is amended to read:

15050. (a) For purposes of this section:

(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, as defined in Section 14400, 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. 10. 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, as defined in Section 14400.

(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.

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.