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LC02722

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO FINANCIAL INSTITUTIONS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: June 01, 2011

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 19-2-12 of the General Laws in Chapter 19-2 entitled "Creation and
2 Expansion" is hereby amended to read as follows:

3 **19-2-12. Relocation of branches.** -- ~~(a)~~ Any financial institution or credit union may
4 relocate a branch upon sixty (60) days prior written notice to the director or the director's
5 designee, upon written application to the director or the director's designee, provided that the
6 relocated branch is:

- 7 (1) To be located within the same city or town as the existing branch; or
8 (2) To be located within a one mile radius of the existing branch; and
9 (3) The existing branch will be closed upon construction and/or occupancy of the
10 relocated branch.

11 ~~(b) The director or the director's designee shall review all written applications for~~
12 ~~relocation of branches and may approve these applications at his or her discretion.~~

13 SECTION 2. Sections 19-5-10, 19-5-13 and 19-5-15 of the General Laws in Chapter 19-5
14 entitled "Credit Unions" are hereby amended to read as follows:

15 **19-5-10. Appointment and term of credit committee members.** ~~Credit Committee.~~ --
16 ~~The board of directors shall appoint a credit committee of no fewer than three (3) members, who~~
17 ~~shall serve at the pleasure of the board of directors.~~ If the bylaws provide for a credit committee,
18 then pursuant to the provisions of the bylaws, the board of directors may appoint, or the members
19 may elect, a credit committee which shall consist of an odd number of members of the credit

1 [union. The method used shall be set forth in the bylaws.](#)

2 **19-5-13. Loan applications.** -- The credit committee or duly appointed loan officer shall
3 approve, in writing, every loan or advance made by the credit union, subject to any limitations
4 which may be set from time to time by the board of directors. Every application for a loan shall
5 be made in writing and shall state the purpose for which the loan is desired and the security
6 offered. No loan shall be made unless the credit committee or loan officer is satisfied that it
7 promises to benefit the borrower, nor unless it has been approved by the committee or duly
8 appointed loan officer in accordance with applicable credit union bylaw provisions. The applicant
9 for a loan may appeal the decision of the credit committee or loan officer to the board of
10 directors. If written approval of the credit committee or loan officer is obtained, nothing
11 contained in this section shall prevent a credit union from extending credit to a member in any
12 manner in which it sees fit; provided that no extension of credit shall be made upon an unsecured
13 revolving credit plan, line of credit, or letter of credit in which the credit authorization exceeds
14 five thousand dollars (\$5,000), unless the credit authorization is reviewed at least annually by the
15 credit committee, [if one exists, or by the board of directors.](#)

16 **19-5-15. Investment of funds -- Powers.** -- The capital, deposits, and surplus of the
17 credit union shall be lent to the members for the purposes and upon the security and terms as the
18 credit committee shall approve, as authorized by a written loan policy, duly adopted by the board
19 of directors. Funds not used in loans to members may be deposited in authorized reserve agents,
20 or invested in the same manner as allowed by the national credit union administration rules and
21 regulations, or in the following manner:

22 (1) Without limitation, in securities issued as direct obligations of the United States
23 government and in securities guaranteed by the United States government or an agency thereof,
24 as to principal and interest, and in any trust or trusts established for investing directly or
25 collectively in these securities only;

26 (2) An amount not exceeding one third (1/3) of the assets may be invested in:

27 (i) Investments other than those described above but which are legal for the investment
28 of funds of financial institutions of this state, subject to the same limitations and restrictions by
29 which financial institutions are governed, provided that credit unions with assets of less than ten
30 million dollars (\$10,000,000) may not invest pursuant to the "prudent person" provisions.

31 (ii) Deposits in financial institutions incorporated under the laws of this state or under
32 federal law and doing business in this state or in those other institutions that may be approved by
33 the director or the director's designee.

34 (iii) Any corporation incorporated by CUNA International, Inc. or its successor, or any

1 associated or subsidiary corporation, for the purpose of providing investment opportunity for
2 credit unions, or any investment or interlending program managed or sponsored by any of these
3 corporations; provided that deposit or investment under this subsection shall be made only after
4 the director or the director's designee has approved the corporation for investment, or the
5 investment or interlending program.

6 (iv) Common or preferred stocks other than those permitted above to the extent of not
7 over five percent (5%) of the assets of investing credit unions with assets less than ten million
8 dollars (\$10,000,000) and to the extent of not over ten percent (10%) of the assets of investing
9 credit unions with assets of ten million dollars (\$10,000,000) or more; provided, however, that
10 any of these securities shall be listed on a national stock exchange or on the National Market
11 System of the NASDAQ stock market; that dividends have been paid by the corporation issuing
12 the security and any predecessor corporation or corporations for at least four (4) of the last five
13 (5) years; that the issuing corporation has, as shown by its last audited statement, total assets of at
14 least one hundred million dollars (\$100,000,000), and a stockholders' equity of not less than forty
15 percent (40%) of the amount of its total assets; and provided, further, that the security shall have
16 been approved for investment by the director or the director's designee. The director or the
17 director's designee shall have absolute discretion in approving individual securities, provided they
18 meet the requirements set forth above. No credit union shall invest in securities under the terms of
19 this subdivision unless it shall have at least one million dollars (\$1,000,000) in total assets as
20 shown by its last annual report. No credit union shall invest more than one percent (1%) of its
21 assets in any one security under the terms of this section.

22 (v) Funds not used in loans to members may be invested in capital shares, obligations,
23 preferred stock issues of any agency or association organized either as a stock company, mutual
24 association, or membership corporation, provided the membership or stockholding, as the case
25 may be, of the agency or association is confined or restricted to credit unions or organizations of
26 credit unions, and provided the purposes for which the agency or association is organized are
27 designed to serve or otherwise assist credit union operations and provided the ~~director or the~~
28 ~~director's designee has approved this~~ investment is authorized by law or regulation for federal
29 credit unions, including, without limitation, an investment in credit union service organizations
30 ("CUSO") as described in subsection 19-5-15(2)(vi).

31 (vi) Subject to the department of business regulation and the National Credit Union
32 Administration's power to limit any CUSO activities or services at any time based upon
33 supervisory, legal or safety and soundness reasons or to refuse to permit any CUSO activities or
34 services, a credit union may invest in, loan to and/or contract with only those CUSOs that are

1 sufficiently bonded or insured for their specific operations and engaged in the preapproved
2 activities and services related to the routine daily operations of credit unions. The director, or
3 director's designee, shall promulgate regulations delineating specific preapproved activities and
4 criteria.

5 In applying the limitations and restrictions as to percentages prescribed in the law
6 governing investments by financial institutions, percentages shall be computed based on the total
7 assets of the credit union.

8 (3) Every credit union shall have the power to exercise, by its board of directors or duly
9 authorized officers or agents, all incidental powers necessary to carry on the business of a credit
10 union including, but not limited to, the power:

11 (i) To receive, upon deposit and for safekeeping, property of every description, upon
12 terms prescribed by the credit union and to construct, own, lease, and maintain safe deposit
13 vaults, with suitable boxes and places for the reception and deposit of the property, and lease the
14 use of these places and boxes to individuals and corporations, upon those terms that the credit
15 union may prescribe. The credit union shall in no case incur any liability on account of the
16 deposit of any property so made with it, or by reason of the leasing of any place of deposit, other
17 than that liability as the credit union shall expressly assume in each case by the terms of the
18 contract or receipt under which it shall accept the deposit or shall have let the place of deposit;

19 (ii) To act as a depository of public money or a financial agent; ~~and~~

20 (iii) To purchase, sell and pledge eligible obligations and assets as set forth in section 19-
21 5-15.1; and

22 (iv)~~(iii)~~ To exercise additional powers, not inconsistent with the carrying on of a credit
23 union business, with the approval of the director or the director's designee.

24 SECTION 3. Chapter 19-5 of the General Laws entitled "Credit Unions" is hereby
25 amended by adding thereto the following section:

26 **19-5-15.1. Purchase, sale and pledge of eligible obligations and assets.** (a) For
27 purposes of this section:

28 (1) "Eligible Obligation" means a loan or group of loans.

29 (2) "Student loan" means a loan granted to finance the borrower's attendance at an
30 institution of higher education or at a vocational school, which is secured by and on which
31 payment of the outstanding principal and interest has been deferred in accordance with the
32 insurance or guarantee of the federal government, of a state government, or any agency of either.

33 (b) Purchase.

34 (1) A credit union may purchase, in whole or in part, within the limitations of the board

1 of directors' written purchase policies:

2 (i) Eligible obligations of its members, from any source, if either:

3 (A) They are loans it is empowered to grant; or

4 (B) They are refinanced with the consent of the borrowers, within sixty (60) days after

5 they are purchased, so that they are loans it is empowered to grant;

6 (ii) Eligible obligations of a liquidating credit union's individual members, from the

7 liquidating credit union;

8 (iii) Student loans, from any source, if the purchaser is granting student loans on an

9 ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool

10 of such loans to be sold or pledged on the secondary market;

11 (iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-

12 secured loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's

13 packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A

14 pool must include a substantial portion of the credit union's members' loans and must be sold

15 promptly; and

16 (v) An indirect lending or indirect leasing arrangement shall be classified as a loan and is

17 not the purchase of an eligible obligation because the credit union makes the final underwriting

18 decision and the sales or lease contract is assigned to the credit union very soon after it is signed

19 by the member and the dealer or leasing company.

20 (2) A credit union may make purchases in accordance with this section (b), provided:

21 (i) The board of directors approves the purchase;

22 (ii) A written agreement and schedule of the eligible obligations covered by the

23 agreement are retained in the purchaser's office; and

24 (iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written

25 approval required by the national Credit Union Association Administration is obtained before

26 consummation of such purchase.

27 (3) The aggregate of the unpaid balance of eligible obligations purchased under

28 paragraph (b) of this section shall not exceed five percent (5%) of the unimpaired capital and

29 surplus of the purchaser. The following may be excluded in calculating this five percent (5%)

30 limitation:

31 (i) Student loans purchased in accordance with paragraph (b)(1)(iii) of this section;

32 (ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;

33 and

34 (iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section

1 that are refinanced by the purchaser so that it is a loan it is empowered grant;

2 (c) Sale. A credit union may sell, in whole or in part, to any source, eligible obligations of
3 its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this
4 section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real
5 estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the
6 limitations of the board of directors' written sale policies, provided:

7 (1) The board of directors approves the sale; and

8 (2) A written agreement and a schedule of the eligible obligations covered by the
9 agreement are retained in the seller's office.

10 (d) Pledge.

11 (1) A credit union may pledge, in whole or in part, to any source, eligible obligations of
12 its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this
13 section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real
14 estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the
15 limitations of the board of directors' written pledge policies, provided:

16 (i) The board of directors approves the pledge;

17 (ii) Copies of the original loan documents are retained; and

18 (iii) A written agreement covering the pledging arrangement is retained in the office of
19 the credit union that pledges the eligible obligations.

20 (2) The pledge agreement shall identify the eligible obligations covered by the
21 agreement.

22 (e) Servicing. A credit union may agree to service any eligible obligation it purchases or
23 sells in whole or in part.

24 (f) Ten percent (10%) limitation. The total indebtedness owing to any credit union by any
25 person, inclusive of retained and reacquired interests, shall not exceed ten percent (10%) of its
26 impaired capital and surplus.

27 (g) Conflicts of Interest.

28 (1) No credit union official, employee, or their immediate family member may receive,
29 directly or indirectly, any compensation in connection with that credit union's purchase, sale, or
30 pledge of an eligible obligation under the provisions of this section.

31 (2) Permissible payments. This section does not prohibit:

32 (i) A credit union's payment of salary to employees;

33 (ii) A credit union's payment of an incentive or bonus to an employee based on the credit
34 union's overall financial performance;

1 (iii) A credit union's payment of an incentive or bonus to an employee, other than a senior
2 management employee, in connection with that credit union's purchase, sale or pledge of an
3 eligible obligation. This payment is permissible if the board of directors establishes a written
4 policy and internal controls for the incentive or bonus program and monitors compliance with the
5 policy and controls at least annually; and

6 (iv) Payment by a person other than the credit union of compensation to a volunteer
7 official, non-senior management, employee, or their immediate family member, for a service or
8 activity performed outside the credit union provided that the credit union, the official, employee,
9 or their immediate family member has not made a referral.

10 (3) Business associates and family members. All transactions under this section with
11 business associates or family members not specifically prohibited by subdivision (g)(1) of this
12 section must be conducted at arm's length and in the interest of the credit union.

13 (4) Definitions.

14 (i) "Compensation" includes non-monetary items, except those of nominal value.

15 (ii) "Immediate family member" means a spouse or other family member living in the
16 same household.

17 (iii) "Official" means any member of the board of directors or a volunteer committee.

18 (iv) "Person" means an individual or an organization.

19 (v) "Senior management employee" means the credit union's chief executive officer
20 (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief
21 executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and
22 the chief financial officer (Comptroller).

23 (vi) "Volunteer official" means an official of a credit union who does not receive
24 compensation from the credit union solely for his or her service as an official.

25 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS

1 This act would allow credit unions to purchase, sell, and pledge loans or groups of loans
2 under certain circumstances and would provide for conflicts of interest provisions with respect to
3 the foregoing. This act would further provide that the total indebtedness owing to any credit union
4 by any person shall not exceed ten percent (10%) of its impaired capital and surplus.

5 This act would take effect upon passage.

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