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HOUSE BILL 1318

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Ryu and Kirby

1 AN ACT Relating to credit unions' capital; amending RCW  
2 31.12.402; and reenacting and amending RCW 31.12.005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 31.12.005 and 2015 c 114 s 1 are each reenacted and  
5 amended to read as follows:

6 Unless the context clearly requires otherwise, as used in this  
7 chapter:

8 (1) "Board" means the board of directors of a credit union.

9 (2) "Board officer" means an officer of the board elected under  
10 RCW 31.12.265(1).

11 (3) "Branch" of a credit union, out-of-state credit union, or  
12 foreign credit union means any facility that meets all of the  
13 following criteria:

14 (a) The facility is a staffed physical facility;

15 (b) The facility is owned or leased in whole or part by the  
16 credit union or its credit union service organization; and

17 (c) Deposits and withdrawals may be made, or shares purchased,  
18 through staff at the facility.

19 (4) "Capital" means a credit union's reserves, undivided  
20 earnings, and allowance for loan and lease losses, payments received  
21 on instruments, or accounts issued pursuant to RCW 31.12.402(24), and

1 other items that may be included under RCW 31.12.413 or by rule or  
2 order of the director.

3 (5) "Credit union" means a credit union organized and operating  
4 under this chapter.

5 (6) "Credit union service organization" means an organization  
6 that a credit union has invested in pursuant to RCW 31.12.436(1)(h),  
7 or a credit union service organization invested in by an out-of-  
8 state, federal, or foreign credit union.

9 (7) "Department" means the department of financial institutions.

10 (8) "Director" means the director of financial institutions.

11 (9) "Federal credit union" means a credit union organized and  
12 operating under the laws of the United States.

13 (10) "Financial institution" means any commercial bank, trust  
14 company, savings bank, or savings and loan association, whether state  
15 or federally chartered, and any credit union, out-of-state credit  
16 union, or federal credit union.

17 (11) "Foreign credit union" means a credit union organized and  
18 operating under the laws of another country or other foreign  
19 jurisdiction.

20 (12) "Insolvency" means:

21 (a) If, under United States generally accepted accounting  
22 principles, the recorded value of the credit union's assets are less  
23 than its obligations to its share account holders, depositors,  
24 creditors, and others; or

25 (b) If it is likely that the credit union will be unable to pay  
26 its obligations or meet its share account holders' and depositors'  
27 demands in the normal course of business.

28 (13) "Loan" means any loan, overdraft line of credit, extension  
29 of credit, or lease, in whole or in part.

30 (14) "Low-income member" means a member whose family income is  
31 not more than eighty percent of the median family income for the  
32 metropolitan statistical area where the member lives or for the  
33 national metropolitan area where the member lives, whichever is  
34 greater, or a member or potential member who earns not more than  
35 eighty percent of the total median earnings for individuals for the  
36 metropolitan statistical area where the member lives or for the  
37 national metropolitan area where the member lives, whichever is  
38 greater. For members living outside of a metropolitan statistical  
39 area, the department must apply the statewide or national

1 nonmetropolitan area median family income or total median earnings  
2 for individuals.

3 (15) "Material violation of law" means:

4 (a) If the credit union or person has violated a material  
5 provision of:

6 (i) Law;

7 (ii) Any cease and desist order issued by the director;

8 (iii) Any condition imposed in writing by the director in  
9 connection with the approval of any application or other request of  
10 the credit union; or

11 (iv) Any supervisory agreement, or any other written agreement  
12 entered into with the director;

13 (b) If the credit union or person has concealed any of the credit  
14 union's books, papers, records, or assets, or refused to submit the  
15 credit union's books, papers, records, or affairs for inspection to  
16 any examiner of the state or, as appropriate, to any examiner of the  
17 national credit union administration; or

18 (c) If a member of a credit union board of directors or  
19 supervisory committee, or an officer of a credit union, has breached  
20 his or her fiduciary duty to the credit union.

21 (16) "Membership share" means an initial share that a credit  
22 union may require a person to purchase in order to establish and  
23 maintain membership in a credit union.

24 (17) "Net worth" means a credit union's capital, less the  
25 allowance for loan and lease losses.

26 (18) "Operating officer" means an employee of a credit union  
27 designated as an officer pursuant to RCW 31.12.265(2).

28 (19) "Organization" means a corporation, partnership,  
29 association, limited liability company, trust, or other organization  
30 or entity.

31 (20) "Out-of-state credit union" means a credit union organized  
32 and operating under the laws of another state or United States  
33 territory or possession.

34 (21) "Person" means an organization or a natural person  
35 including, but not limited to, a sole proprietorship.

36 (22) "Principally" or "primarily" means more than one-half.

37 (23) "Senior operating officer" includes:

38 (a) An operating officer who is a vice president or above; and

39 (b) Any employee who has policy-making authority.

1 (24) "Significantly undercapitalized" means a net worth to total  
2 assets ratio of less than four percent.

3 (25) "Small credit union" means a credit union with up to ten  
4 million dollars in total assets.

5 (26) "Unsafe or unsound condition" means, but is not limited to:

6 (a) If the credit union is insolvent;

7 (b) If the credit union has incurred or is likely to incur losses  
8 that will deplete all or substantially all of its net worth;

9 (c) If the credit union is in imminent danger of losing its share  
10 and deposit insurance or guarantee; or

11 (d) If the credit union is significantly undercapitalized.

12 (27) "Unsafe or unsound practice" means any action, or lack of  
13 action, which is contrary to generally accepted standards of prudent  
14 operation, the likely consequences of which, if continued, would be  
15 abnormal risk of loss or danger to a credit union, its members, or an  
16 organization insuring or guaranteeing its shares and deposits.

17 **Sec. 2.** RCW 31.12.402 and 2011 c 303 s 6 are each amended to  
18 read as follows:

19 A credit union may:

20 (1) Issue shares to and receive deposits from its members in  
21 accordance with RCW 31.12.416;

22 (2) Make loans to its members in accordance with RCW 31.12.426  
23 and 31.12.428;

24 (3) Pay dividends and interest to its members in accordance with  
25 RCW 31.12.418;

26 (4) Impose reasonable charges for the services it provides to its  
27 members;

28 (5) Impose financing charges and reasonable late charges in the  
29 event of default on loans, subject to applicable law, and recover  
30 reasonable costs and expenses, including, but not limited to,  
31 collection costs, and reasonable attorneys' fees incurred both before  
32 and after judgment, incurred in the collection of sums due, if  
33 provided for in the note or agreement signed by the borrower;

34 (6) Acquire, lease, hold, assign, pledge, sell, or otherwise  
35 dispose of interests in personal property and in real property in  
36 accordance with RCW 31.12.438;

37 (7) Deposit and invest funds in accordance with RCW 31.12.436;

38 (8) Borrow money, up to a maximum of fifty percent of its total  
39 shares, deposits, and net worth;

1 (9) Discount or sell any of its assets, or purchase any or all of  
2 the assets of another credit union, out-of-state credit union, or  
3 federal credit union. However, a credit union may not discount or  
4 sell all, or substantially all, of its assets without the approval of  
5 the director;

6 (10) Accept deposits of deferred compensation of its members;

7 (11) Act as fiscal agent for and receive payments on shares and  
8 deposits from the federal government or this state, and any agency or  
9 political subdivision thereof;

10 (12) Engage in activities and programs as requested by the  
11 federal government, this state, and any agency or political  
12 subdivision thereof, when the activities or programs are not  
13 inconsistent with this chapter;

14 (13) Hold membership in credit unions, out-of-state credit  
15 unions, or federal credit unions and in organizations controlled by  
16 or fostering the interests of credit unions, including, but not  
17 limited to, a central liquidity facility organized under state or  
18 federal law;

19 (14) Pay additional dividends and interest to members, or an  
20 interest rate refund to borrowers;

21 (15) Enter into lease agreements, lease contracts, and  
22 lease-purchase agreements with members;

23 (16) Act as insurance agent or broker for the sale to members of:

24 (a) Group life, accident, health, and credit life and disability  
25 insurance; and

26 (b) Other insurance that other types of Washington state-  
27 chartered financial institutions are permitted to sell, on the same  
28 terms and conditions that these institutions are permitted to sell  
29 such insurance;

30 (17) Impose a reasonable service charge for the administration  
31 and processing of accounts that remain dormant for a period of time  
32 specified by the credit union;

33 (18) Establish and operate on-premises or off-premises electronic  
34 facilities;

35 (19) Enter into formal or informal agreements with another credit  
36 union for the purpose of fostering the development of the other  
37 credit union;

38 (20) Work with community leaders to develop and prioritize  
39 efforts to improve the areas where their members reside by making  
40 investments in the community through contributions to organizations

1 that primarily serve either a charitable, social, welfare, or  
2 educational purpose, or are exempt from taxation pursuant to section  
3 501(c)(3) of the internal revenue code;

4 (21) Limit the personal liability of its directors in accordance  
5 with provisions of its articles of incorporation that conform with  
6 RCW 23B.08.320;

7 (22) Indemnify its directors, supervisory committee members,  
8 officers, employees, and others in accordance with provisions of its  
9 articles of incorporation or bylaws that conform with RCW 23B.08.500  
10 through 23B.08.600;

11 (23) Conduct a promotional contest of chance as authorized in RCW  
12 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and  
13 (~~30.22.260~~) 30A.22.260 are complied with to the satisfaction of the  
14 director; (~~and~~)

15 (24) Subject to any applicable rules adopted by the director,  
16 receive payments on accounts or instruments subject to the terms,  
17 rates, and conditions as may be established by the board, and that:

18 (a) Are not shares or deposits;

19 (b) Do not provide voting or other membership rights to their  
20 holder;

21 (c) Do not alter the cooperative nature of the credit union;

22 (d) Are subordinate to the claims of all creditors of the credit  
23 union including claims of shareholders, depositors, and the insurer  
24 under the federal share insurance program or equivalent as required  
25 by RCW 31.12.408;

26 (e) Are not subject to share or deposit insurance pursuant to RCW  
27 31.12.408; and

28 (f) Are available to be applied to cover operating losses of the  
29 credit union in excess of its retained earnings, and to the extent so  
30 applied, will not be replenished; and

31 (25) Exercise such incidental powers as are necessary or  
32 convenient to enable it to conduct the business of a credit union.

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