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SENATE BILL 6355

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State of Washington

55th Legislature

1998 Regular Session

By Senators Winsley, Prentice, Sellar, Heavey, Benton and Hale; by request of Department of Financial Institutions

Read first time . Referred to Committee on .

1 AN ACT Relating to share insurance for credit unions; amending RCW  
2 31.12A.007, 31.12.407, and 31.12.408; adding new sections to chapter  
3 31.12A RCW; adding a new section to chapter 31.12 RCW; and providing  
4 expiration dates.

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

6 **Sec. 1.** RCW 31.12A.007 and 1996 c 5 s 4 are each amended to read  
7 as follows:

8 (1) Members with a composite capital, asset quality, management,  
9 earnings, and liquidity rating by the department of three, four, or  
10 five shall, by September 1, 1996, file a:

11 (a) Completed application for insurance of share accounts with the  
12 national credit union administration to become insured under the  
13 federal share insurance program, with a copy promptly forwarded to the  
14 director by the applicant;

15 (b) Completed application to merge into a credit union with the  
16 director under RCW ((31.12.695)) 31.12.461; or

17 (c) Detailed notice of liquidation of the credit union with the  
18 director under RCW ((31.12.725)) 31.12.474.

1 Members with a composite capital adequacy, asset quality,  
2 management, earnings, and liquidity rating of one or two shall  
3 accomplish one of the acts set forth in (a) through (c) of this  
4 subsection by December 1, 1996.

5 Each member shall promptly forward a copy of the application or  
6 notice to the association.

7 If a member fails to file the application or notice as required by  
8 this section the failure will constitute an unsafe and unsound  
9 condition or practice that seriously jeopardizes the interests of the  
10 member's depositors and shareholders. The failure shall constitute  
11 grounds for the director to issue a temporary order under RCW 31.12.595  
12 requiring the member to complete the application or notice and to take  
13 such other action as the director deems necessary, and shall constitute  
14 grounds for the director to issue a notice of charges under RCW  
15 31.12.585.

16 (2) The association's guarantee of a member credit union will cease  
17 upon the earlier of: (a) The member's completion of conversion to  
18 insurance of share accounts under the federal share insurance program,  
19 or merger into a federally insured credit union, or liquidation, as  
20 applicable; or (b) December 31, 1998.

21 (3) If a member whose application for insurance of share accounts  
22 is approved by the national credit union administration fails to  
23 complete the insurance conversion in the time allowed by the national  
24 credit union administration, the failure will constitute an unsafe and  
25 unsound condition or practice that seriously jeopardizes the interests  
26 of the member's depositors and shareholders. The failure shall  
27 constitute grounds for the director to issue a temporary order under  
28 RCW 31.12.595 requiring the member to complete the insurance conversion  
29 and to take such other action as the director deems necessary, and  
30 shall constitute grounds for the director to issue a notice of charges  
31 under RCW 31.12.585. The authority granted to the director under this  
32 subsection may be exercised only after January 1, 1998.

33 (4) In addition to the action authorized in subsection (3) of this  
34 section, if a member fails to obtain federal share insurance, merge  
35 into a federally insured credit union, or liquidate by December 31,  
36 1998, the director may appoint a liquidating agent, conservator, or  
37 receiver for (~~(the involuntary liquidation of)~~) the member under (~~(RCW~~  
38 ~~31.12.675 and 31.12.685)) chapter 31.12 RCW as if the member were  
39 insolvent, unless the member is insured or guaranteed by an interim~~

1 share insurance or guaranty program approved by the director under  
2 section 7 of this act.

3 (5) Members that obtain share insurance under the federal share  
4 insurance program or merge with a credit union insured under the  
5 federal share insurance program shall continue to maintain their  
6 contingency reserve under RCW 31.12A.050, and capital reserve required  
7 by the association, and shall continue to be liable for assessments  
8 under RCW 31.12A.090, as if they were members, until December 31, 1998.  
9 The amount of these reserves is based on the member's guaranteeable  
10 outstanding share and deposit balances as of December 31st of the year  
11 prior to the conversion or merger, as appropriate.

12 (6) The contingency and capital reserve required by the association  
13 shall be included as capital for determining composite capital  
14 adequacy, asset quality, management, and earnings and liquidity ratings  
15 by regulatory authorities.

16 NEW SECTION. Sec. 2. A new section is added to chapter 31.12A RCW  
17 to read as follows:

18 (1) Definition. As used in this chapter, "qualified former member"  
19 means a member as of December 31, 1995.

20 (2) Dissolution--Liquidation. The association shall dissolve  
21 effective December 31, 1998, and be fully liquidated by December 31,  
22 2000, in accordance with a written plan to be adopted by the  
23 association's board of directors and approved by the director.

24 (3) Effect of dissolution. (a) During the period of liquidation,  
25 the association shall continue its existence but may not carry on any  
26 business except that appropriate to wind up and liquidate its business  
27 and affairs, including:

28 (i) Collecting its assets;

29 (ii) Converting to cash its properties that will not be distributed  
30 in kind;

31 (iii) Discharging or making provision for discharging its debts,  
32 liabilities, and obligations; and

33 (iv) Distributing or making provision for the distribution of its  
34 property and assets.

35 (b) After discharging or making provision for discharging all  
36 debts, liabilities, and obligations, including but not limited to  
37 payment or provision for payment of all contracted assistance or  
38 guarantees, any remaining property and assets of the association,

1 including but not limited to funds representing the capital reserves  
2 maintained by qualified former members or their successors, shall be  
3 distributed pro rata to qualified former members of the association or  
4 their successors. The pro rata distribution shall be based on  
5 guaranteeable outstanding share and deposit balances of qualified  
6 former members as of December 31, 1995, except to the extent any  
7 contracted assistance or guarantees with a qualified former member or  
8 its successor expressly provides otherwise.

9 (4) Not affected by dissolution. The association's dissolution  
10 does not:

11 (a) Transfer title to its property;

12 (b) Prevent transfer of its assets;

13 (c) Subject its directors or officers to standards of conduct other  
14 than those prescribed in this chapter;

15 (d) Change quorum or voting requirements for its board of directors  
16 or member credit unions; change provisions for selection, resignation,  
17 or removal of its directors or officers or both; or change provisions  
18 for amending its bylaws;

19 (e) Prevent commencement of a proceeding by or against it in its  
20 name; or

21 (f) Abate or suspend proceedings pending by or against it or to  
22 which it is a party as agent or otherwise on the effective date of  
23 dissolution.

24 (5) This section expires December 31, 2000.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 31.12A RCW  
26 to read as follows:

27 (1) Notice to creditors--Manner. The association shall within  
28 thirty days after the effective date of dissolution give a notice to  
29 the association's creditors informing them of the dissolution and  
30 requiring all those with claims against the association to serve the  
31 claim on the association within one hundred twenty days after the date  
32 of the first publication of the notice, known and referred to as the  
33 one hundred twenty-day limitation period. This notice shall be given  
34 as follows:

35 (a) The association will give actual notice, as provided in  
36 subsection (3) of this section, to the creditors that it knows of and  
37 to those creditors who become known to the association within the one  
38 hundred twenty-day limitation period; and

1 (b) The association will cause the notice to be published once in  
2 each week for three successive weeks in a legal newspaper of general  
3 circulation in the county in which the association's principal place of  
4 business is located.

5 Except as otherwise provided in subsection (3) of this section, any  
6 claim not filed within the one hundred twenty-day limitation period is  
7 forever barred, if not already barred by any otherwise applicable  
8 statute of limitations.

9 (2) Known and ascertainable creditors. The association shall  
10 exercise due diligence within the one hundred twenty-day limitation  
11 period to discover reasonably ascertainable creditors of the  
12 association. The association will have exercised due diligence in  
13 ascertaining creditors upon (a) conducting, within the one hundred  
14 twenty-day limitation period, a reasonable review of the association's  
15 books, records, accounts, resolutions, minutes, and correspondence,  
16 including correspondence received after the effective date of  
17 dissolution, and financial records, including checkbooks, bank  
18 statements, etc., that are in the association's possession or are  
19 reasonably available to it, and (b) having made reasonable inquiry of  
20 the association's directors, officers, employees, and agents regarding  
21 claimants. If the association conducts the review and makes the  
22 inquiry, it is presumed to have exercised reasonable diligence to  
23 ascertain creditors of the association and creditors not ascertained in  
24 the review or in an inquiry are presumed not reasonably ascertainable.  
25 These presumptions may be rebutted only by clear, cogent, and  
26 convincing evidence. In any proceeding against the association  
27 involving a late claim, the association may, in addition to any other  
28 methods of proof available under the rules of evidence, prove the  
29 review and inquiry by filing an affidavit or declaration to that effect  
30 in the proceeding.

31 (3) Notice to creditors--Time limits. The actual notice described  
32 in subsection (1)(a) of this section, as to creditors known and those  
33 becoming known to the association within the one hundred twenty-day  
34 limitation period, shall be given to the creditors by personal service  
35 or regular first class mail, addressed to the creditor's last known  
36 address, postage prepaid. The actual notice shall be given before the  
37 later of the expiration of the one hundred twenty-day limitation period  
38 or thirty days after any creditor became known to the association  
39 within the one hundred twenty-day limitation period. Any known

1 creditor is barred unless the creditor has filed a claim, as otherwise  
2 provided in this section, within the one hundred twenty-day limitation  
3 period or within thirty days following the date of actual notice to  
4 that creditor, whichever is later. If notice is given by mail, the  
5 date of mailing shall be the date of notice.

6 (4) Claims against the association--Time limits. Whether or not  
7 notice under subsection (1) of this section has been given or should  
8 have been given, any person having a claim against the association who  
9 has not filed a claim within twelve months from the effective date of  
10 the association's dissolution shall be forever barred from making a  
11 claim against the association, or commencing an action against the  
12 association, if the claim or action is not already barred by any  
13 otherwise applicable statute of limitations. However, the twelve-month  
14 limitation does not apply to any claims where the association has not  
15 given the actual notice described in subsection (1) of this section and  
16 during the twelve-month period following the effective date of the  
17 association's dissolution, partial performance has been made on the  
18 obligation underlying the claim. An otherwise applicable statute of  
19 limitations applies without regard to the tolling provisions of RCW  
20 4.16.190. Any claim filed within twelve months from the effective date  
21 of the association's dissolution and not otherwise barred under this  
22 chapter shall be made in the form and manner provided under subsection  
23 (6) of this section, as if the notice under subsection (1) of this  
24 section had been given.

25 (5) Deposit with state treasurer. Association assets that should  
26 be transferred to a creditor or claimant of the association who cannot  
27 be found or who is not competent to receive them may be reduced to cash  
28 and deposited with the state treasurer, and if the creditor or claimant  
29 furnishes satisfactory proof of entitlement to the amount deposited,  
30 the state treasurer or other appropriate state official shall pay that  
31 person or that person's representative that amount.

32 (6) Notice--Form. Notice under RCW 31.12A.--(1) (subsection (1)  
33 of this section) shall be in substantially the following form:

34 Washington Credit Union Share Guaranty Association  
35 (hereafter referred to as WCUSGA) has been dissolved by section  
36 2 of this act. The effective date of dissolution is December  
37 31, 1998. Persons having claims against WCUSGA must, prior to  
38 the time such claims would be barred by any otherwise  
39 applicable statute of limitations, serve their claims on WCUSGA

1 at the address stated below within one hundred twenty days  
2 after the date of first publication of this notice or, except  
3 under those provisions included in RCW 31.12A.---(3)  
4 (subsection 3 of this section), the claim will be forever  
5 barred. Claims submitted must contain the information required  
6 below.

7 DATE OF FIRST

8 PUBLICATION: . . . . .

9 WCUSGA ADDRESS: (Here designate WCUSGA's  
10 address for notice purposes)

11 INFORMATION REQUIRED IN CLAIMS:

- 12 1. The name and address of the claimant;
- 13 2. The name, business address (if  
14 different from that of the claimant),  
15 and nature of authority of any person  
16 signing the claim on behalf of the  
17 claimant;
- 18 3. A written statement of the facts or  
19 circumstances constituting the basis  
20 upon which the claim is submitted;
- 21 4. The amount of the claim; and
- 22 5. Whether the claim is secured,  
23 unliquidated or contingent, or not yet  
24 due; the nature of the security; the  
25 nature of any uncertainty; and the due  
26 date of the claim: *Provided however,*  
27 *That failure to describe correctly the*  
28 *security, nature of any uncertainty,*  
29 *or the due date of a claim not yet*  
30 *due, if such failure is not*  
31 *substantially misleading, does not*  
32 *invalidate the claim.*

33 (7) Allowance or rejection of claims--Time limitations for  
34 rejection--Notification of rejection--Requirements--Compromise of  
35 claim. The association may accept claims, reject claims, or accept  
36 claims in part and reject them in part.

1 (a) If the association rejects a claim, in whole or in part, it  
2 shall notify the claimant of the rejection. If the rejection is for  
3 part of the claim, the notification shall state the amount of the claim  
4 rejected and the amount of the claim accepted. The notification shall  
5 be by certified mail, postage prepaid, addressed to the claimant at the  
6 claimant's address stated in the claim; if a person other than the  
7 claimant signed the claim for or on behalf of the claimant, and that  
8 person's business address as stated in the claim is different from that  
9 of the claimant, notification of rejection shall also be made by  
10 certified mail, postage prepaid, upon that person; the date of the  
11 postmark is the date of notification. The notification of rejection  
12 shall advise the claimant, and the person making claim on his, her, or  
13 its behalf, if any, that the claimant must bring suit in the proper  
14 court against the association within thirty days after notification of  
15 rejection or before expiration of the time for serving and filing  
16 claims against the association, whichever period is longer, and that  
17 otherwise the claim will be forever barred.

18 (b) The association may, either before or after rejection of any  
19 claim, compromise the claim, whether due or not, absolute or  
20 contingent, or liquidated or unliquidated, if it appears to the  
21 association that such a compromise is in its best interests.

22 (8) Effect of acceptance. Every claim that has been accepted by  
23 the association shall be ranked among the association's acknowledged  
24 debts to be paid in the course of liquidation.

25 (9) Suit on rejected claim. When a claim is rejected by the  
26 association, the holder must bring suit in the proper court against the  
27 association within thirty days after notification of the rejection or  
28 before expiration of the time for serving and filing claims against the  
29 association, whichever period is longer, otherwise the claim is forever  
30 barred.

31 (10) Outlawed claims. No claim that is barred by the statutes of  
32 limitation shall be accepted by the association or by a court.

33 (11) Claims must be presented. A holder of any claim against the  
34 association shall not maintain an action thereon unless the claim has  
35 been first presented as provided in this chapter.

36 (12) Partial acceptance of claim--Costs. Whenever any claim is  
37 presented to the association and a part thereof is accepted, as  
38 reflected in the association's notice of rejection, and if the claimant  
39 rejects the amount so offered by the association in satisfaction of the

1 claim, the claimant shall recover no costs in any action brought  
2 against the association unless the claimant's recovery, exclusive of  
3 interest and costs, is greater than the amount accepted by the  
4 association.

5 (13) Judgment against association--Payment. If any judgment has  
6 been rendered against the association prior to the effective date of  
7 its dissolution, no execution shall issue thereon after the effective  
8 date of its dissolution. The claim shall be presented to the  
9 association as any other claim, but need not be supported by the  
10 information otherwise required to be included in creditors' claims. If  
11 the claim is justly due and unsatisfied, it shall be paid in due course  
12 of liquidation. If there is a lien on any property of the association,  
13 that property may be sold for the satisfaction of the lien, and the  
14 officer making the sale shall account to the association for any  
15 surplus.

16 (14) This section expires December 31, 2000.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 31.12A RCW  
18 to read as follows:

19 (1) After the dissolution and liquidation of the association have  
20 been completed in accordance with this chapter, an officer of the  
21 association shall execute articles of dissolution and file the articles  
22 with the director. The articles of dissolution shall set forth:

23 (a) The name of the association;

24 (b) The approved plan for the dissolution of the association;

25 (c) That all debts, liabilities, and obligations of the association  
26 have been paid and discharged or that adequate provision has been made  
27 in accordance with this chapter;

28 (d) That all the remaining property and assets of the association  
29 have been transferred, conveyed, or distributed, or that adequate  
30 provision has been made in accordance with this chapter;

31 (e) That there are no suits pending against the association in any  
32 court or, if any suits are pending against it, that adequate provision  
33 has been made for the satisfaction of any judgment, order, or decree  
34 which may be entered; and

35 (f) That a copy of a revenue clearance certificate issued under  
36 chapter 82.32 RCW, if applicable, is included.

1       Upon the filing of the articles of dissolution with the director,  
2 the dissolution and liquidation of the association shall be deemed  
3 complete.

4       (2) This section expires December 31, 2000.

5       **Sec. 5.** RCW 31.12.407 and 1996 c 5 s 5 are each amended to read as  
6 follows:

7       Credit unions must be insured by the federal share insurance  
8 program under the national credit union administration, or be insured  
9 or guaranteed by an interim share insurance or guaranty program  
10 approved by the director under section 7 of this act, on or before  
11 December 31, 1998.

12       **Sec. 6.** RCW 31.12.408 and 1996 c 5 s 6 are each amended to read as  
13 follows:

14       (1) After December 31, 1998, credit unions must be insured under  
15 the federal share insurance program or an equivalent share insurance  
16 program as defined in this section, or an interim share insurance or  
17 guaranty program approved by the director under section 7 of this act.  
18 For the purposes of this section an equivalent share insurance program  
19 is a program that: (a) Holds reserves proportionately equal to the  
20 federal share insurance program; (b) maintains adequate reserves and  
21 access to additional sources of funds through replenishment features,  
22 reinsurance, or other sources of funds; and (c) has share insurance  
23 contracts that reflect a national geographic diversity.

24       (2) Before any credit union may insure its share deposits with a  
25 share insurance program other than (a) the federal share insurance  
26 program or (b) an interim share insurance or guaranty program approved  
27 under section 7 of this act, the director must make a finding that the  
28 alternative share insurance program meets the standards set forth in  
29 this section, following a public hearing and a report on the basis for  
30 such finding to the appropriate standing committees of the legislature.  
31 All such findings shall be made before December 1st of any year and  
32 shall not take effect until the end of the regular legislative session  
33 of the following year.

34       (3) Any alternative share insurance program approved under this  
35 section shall be reviewed annually by the director to determine whether  
36 the program currently meets the standards in this section. The  
37 director shall prepare a written report of his or her findings

1 including supporting analysis and forward the report to the appropriate  
2 standing committees of the legislature. If the director finds that the  
3 alternative share insurance program does not currently meet the  
4 standards of this section the director shall notify all credit unions  
5 that insure their shares under the alternative share insurance program,  
6 and shall include notice of a public hearing for the purpose of  
7 receiving comment on the director's finding. Following the hearing the  
8 director may either rescind his or her finding or reaffirm the finding  
9 that the alternative share insurance program does not meet the  
10 standards in this section. If the finding is reaffirmed, the director  
11 shall order all credit unions whose shares are insured with the  
12 alternative share insurance program to file, immediately, an  
13 application with the national credit union administration to convert to  
14 the federal share insurance program.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 31.12 RCW  
16 to read as follows:

17 (1) A credit union with a composite capital adequacy, asset  
18 quality, management, earnings, and liquidity rating of one or two,  
19 which has filed a completed application for insurance of share accounts  
20 with the national credit union administration in compliance with RCW  
21 31.12A.007(1), and which has not been approved for such insurance by  
22 September 30, 1998, may obtain a form of interim share insurance or  
23 guaranty substantially similar to the coverage of the federal share  
24 insurance program, with the prior approval of the director, for the  
25 period from December 31, 1998, through July 1, 2001. An interim share  
26 insurance or guaranty program approved by the director under this  
27 section is not subject to RCW 31.12.408.

28 (2) If a credit union insured or guaranteed by an interim share  
29 insurance or guaranty program approved by the director under this  
30 section fails to obtain federal share insurance, merge into a federally  
31 insured credit union, or liquidate by July 1, 2001, or fails to obtain  
32 insurance under an equivalent share insurance program under RCW  
33 31.12.408 by July 1, 2001, the director may appoint a liquidating  
34 agent, conservator, or receiver for the credit union under this chapter  
35 as if the credit union were insolvent.

36 (3) This section expires July 1, 2001.

1        NEW SECTION.   **Sec. 8.**   Section 1 of this act expires December 31,  
2   2000.

3        NEW SECTION.   **Sec. 9.**   Sections 5 and 6 of this act expire July 1,  
4   2001.

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