

CERTIFICATION OF ENROLLMENT

SENATE BILL 5302

Chapter 34, Laws of 2013

63rd Legislature
2013 Regular Session

CREDIT UNIONS--CORPORATE GOVERNANCE AND INVESTMENTS

EFFECTIVE DATE: 07/28/13

Passed by the Senate February 26, 2013
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 12, 2013
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 22, 2013, 3:35 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5302** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 23, 2013

**Secretary of State
State of Washington**

SENATE BILL 5302

Passed Legislature - 2013 Regular Session

State of Washington

63rd Legislature

2013 Regular Session

By Senators Benton and Hobbs

Read first time 01/25/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to credit unions' corporate governance and
2 investments; and amending RCW 31.12.005, 31.12.195, 31.12.225,
3 31.12.235, 31.12.285, 31.12.365, 31.12.426, 31.12.436, 31.12.438,
4 31.12.461, and 31.12.630.

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

6 **Sec. 1.** RCW 31.12.005 and 2010 c 87 s 1 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, as used in this
9 chapter:

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

11 (2) "Board officer" means an officer of the board elected under RCW
12 31.12.265(1).

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

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

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

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

3 (4) "Capital" means a credit union's reserves, undivided earnings,
4 and allowance for loan and lease losses, and other items that may be
5 included under RCW 31.12.413 or by rule or order of the director.

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

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

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

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

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

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

20 (11) "Foreign credit union" means a credit union organized and
21 operating under the laws of another country or other foreign
22 jurisdiction.

23 (12) "Insolvency" means:

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

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

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

33 (14) "Material violation of law" means:

34 (a) If the credit union or person has violated a material provision
35 of:

36 (i) Law;

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

1 (iii) Any condition imposed in writing by the director in
2 connection with the approval of any application or other request of the
3 credit union; or

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

6 (b) If the credit union or person has concealed any of the credit
7 union's books, papers, records, or assets, or refused to submit the
8 credit union's books, papers, records, or affairs for inspection to any
9 examiner of the state or, as appropriate, to any examiner of the
10 national credit union administration; or

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

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

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

19 (17) "Operating officer" means an employee of a credit union
20 designated as an officer pursuant to RCW 31.12.265(2).

21 (18) "Organization" means a corporation, partnership, association,
22 limited liability company, trust, or other organization or entity.

23 (19) "Out-of-state credit union" means a credit union organized and
24 operating under the laws of another state or United States territory or
25 possession.

26 (20) "Person" means an organization or a natural person including,
27 but not limited to, a sole proprietorship.

28 (21) "Principally" or "primarily" means more than one-half.

29 (22) "Senior operating officer" includes:

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

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

32 (23) "Significantly undercapitalized" means a net worth to total
33 assets ratio of less than four percent.

34 (24) "Small credit union" means a credit union with up to ten
35 million dollars in total assets.

36 (25) "Unsafe or unsound condition" means, but is not limited to:

37 (a) If the credit union is insolvent;

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

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

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

6 (26) "Unsafe or unsound practice" means any action, or lack of
7 action, which is contrary to generally accepted standards of prudent
8 operation, the likely consequences of which, if continued, would be
9 abnormal risk of loss or danger to a credit union, its members, or an
10 organization insuring or guaranteeing its shares and deposits.

11 **Sec. 2.** RCW 31.12.195 and 1997 c 397 s 13 are each amended to read
12 as follows:

13 (1) A special membership meeting of a credit union may be called by
14 a majority of the board, a majority vote of the supervisory committee,
15 or upon written application of at least ten percent or two thousand of
16 the members of a credit union, whichever is less.

17 (2) A request for a special membership meeting of a credit union
18 shall be in writing and shall state specifically the purpose or
19 purposes for which the meeting is called. At this meeting, only those
20 agenda items detailed in the written request may be considered. If the
21 special membership meeting is being called for the removal of one or
22 more directors, the request shall state the name of the director or
23 directors whose removal is sought.

24 (3) Upon receipt of a request for a special membership meeting, the
25 secretary of the credit union shall designate the time and place at
26 which the special membership meeting will be held. The designated
27 place of the meeting must be a reasonable location within the county in
28 which the principal place of business of the credit union is located,
29 unless provided otherwise by the bylaws. The designated time of the
30 membership meeting must be (~~no sooner than twenty, and~~) no later than
31 (~~thirty~~) ninety days after the request is received by the secretary.

32 The secretary shall give notice of the meeting (~~within ten days of~~
33 ~~receipt of the request~~) at least thirty days before the special
34 membership meeting, or within such other reasonable time period as may
35 be provided by the bylaws. The notice must include the purpose or
36 purposes for which the meeting is called, (~~as provided in the bylaws.~~

1 If)) and, if the special membership meeting is being called for the
2 removal of one or more directors, the notice must state the name of the
3 director or directors whose removal is sought.

4 (4) Except as provided in this subsection, the chairperson of the
5 board shall preside over special membership meetings. If the purpose
6 of the special meeting includes the proposed removal of the
7 chairperson, the next highest ranking board officer whose removal is
8 not sought shall preside over the special meeting. If the removal of
9 all board officers is sought, the chairperson of the supervisory
10 committee shall preside over the special meeting.

11 (5) Special membership meetings shall be conducted according to the
12 rules of procedure approved by the board.

13 **Sec. 3.** RCW 31.12.225 and 2001 c 83 s 6 are each amended to read
14 as follows:

15 (1) The business and affairs of a credit union shall be managed by
16 a board of not less than five and not greater than fifteen directors.

17 (2) The directors must be elected at the credit union's annual
18 membership meeting. They shall hold their offices until their
19 successors are qualified and elected or appointed.

20 (3) Directors shall be elected to terms of between one and three
21 years, as provided in the bylaws. If the terms are longer than one
22 year, the directors must be divided into classes, and an equal number
23 of directors, as nearly as possible, must be elected each year.

24 (4) Any vacancy on the board must be filled by an interim director
25 appointed by the board, unless the interim director would serve a term
26 of fewer than ninety days. Interim directors appointed to fill
27 vacancies created by expansion of the board will serve until the next
28 annual meeting of members. Other interim directors will serve out the
29 unexpired term of the former director, unless provided otherwise in the
30 credit union's bylaws.

31 (5) The board will have at least six regular meetings (~~(not less~~
32 ~~frequently than once each month))~~ each year, with at least one of these
33 meetings held in each calendar quarter. The director may require the
34 board to meet more frequently than six times per year if the director
35 finds it necessary in order to address matters noted in any
36 examination. The director may adopt rules to interpret this section.

1 **Sec. 4.** RCW 31.12.235 and 2001 c 83 s 7 are each amended to read
2 as follows:

3 (1) A director must be a natural person and a member of the credit
4 union. If a director ceases to be a member of the credit union, the
5 director shall no longer serve as a director.

6 (2)(a) If a director is absent from (~~four~~) more than one-fourth
7 of the regular board meetings in any twelve-month period in a term
8 without being reasonably excused by the board, the director shall no
9 longer serve as a director for the period remaining in the term.

10 (b) The board secretary shall promptly notify the director that he
11 or she shall no longer serve as a director. Failure to provide notice
12 does not affect the termination of the director's service under (a) of
13 this subsection.

14 (3) A director must meet any qualification requirements set forth
15 in the credit union's bylaws. If a director fails to meet these
16 requirements, the director shall no longer serve as a director.

17 (4) The operating officers and employees of the credit union may
18 serve as directors of the credit union, but only as permitted by the
19 credit union's bylaws. In no event may the operating officers and
20 employees of the credit union constitute a majority of the board.

21 **Sec. 5.** RCW 31.12.285 and 1997 c 397 s 21 are each amended to read
22 as follows:

23 The board may (~~suspend~~), for cause, suspend a member of the board
24 or a member of the supervisory committee until a special membership
25 meeting, called for that purpose, is held under RCW 31.12.195. The
26 membership meeting must be held within (~~thirty~~) sixty days after the
27 suspension. The members attending the meeting shall vote whether to
28 remove a suspended party. For purposes of this section, "cause"
29 includes demonstrated financial irresponsibility, a breach of fiduciary
30 duty to the credit union, or activities which, in the judgment of the
31 board, threaten the safety and soundness of the credit union.

32 **Sec. 6.** RCW 31.12.365 and 2001 c 83 s 12 are each amended to read
33 as follows:

34 (1) A credit union may pay to its directors and supervisory
35 committee members (~~(of committees shall not receive)~~) reasonable
36 compensation for their service as directors and supervisory committee

1 members. (~~((However, this subsection does not prohibit))~~) A credit union
2 may also provide to its directors (~~((or))~~) and supervisory committee
3 members (~~((from receiving))~~):

4 (a) Gifts of minimal value; (~~((and))~~)
5 (b) Insurance coverage or incidental services, available to
6 employees generally(~~((-~~
7 ~~((2) Directors and members of committees may receive))~~); and
8 (c) Reimbursement for reasonable expenses incurred on behalf of
9 themselves and their spouses in the performance of the directors' and
10 supervisory committee members' duties.

11 (~~((3) Loans to directors and supervisory and credit committee~~
12 ~~members may not be made under more favorable terms and conditions than~~
13 ~~those made to members generally))~~) (2) The director may adopt rules to
14 interpret this section.

15 **Sec. 7.** RCW 31.12.426 and 2001 c 83 s 17 are each amended to read
16 as follows:

17 (1) A credit union may make secured and unsecured loans to its
18 members under policies established by the board, subject to the loans
19 to one borrower limits provided for in RCW 31.12.428. Each loan must
20 be evidenced by records adequate to support enforcement or collection
21 of the loan and any review of the loan by the director. Loans must be
22 in compliance with rules adopted by the director.

23 (2) Loans to directors, supervisory committee members, and credit
24 committee members may not be made under more favorable terms and
25 conditions than those made to members generally.

26 (3) A credit union may obligate itself to purchase loans in
27 accordance with RCW 31.12.436(1)(a), if the credit union's underwriting
28 policies would have permitted it to originate the loans.

29 **Sec. 8.** RCW 31.12.436 and 2001 c 83 s 19 are each amended to read
30 as follows:

31 (1) A credit union may invest its funds in any of the following, as
32 long as (~~((they))~~) the investments are deemed prudent by the board:

33 (~~((1))~~) (a) Loans held by credit unions, out-of-state credit
34 unions, or federal credit unions; loans to members held by other
35 lenders; and loans to nonmembers held by other lenders, with the
36 approval of the director;

1 ~~((+2))~~ (b) Bonds, securities, or other investments that are fully
2 guaranteed as to principal and interest by the United States
3 government, and general obligations of this state and its political
4 subdivisions;

5 ~~((+3))~~ (c) Obligations issued by corporations designated under 31
6 U.S.C. Sec. 9101, or obligations, participations or other instruments
7 issued and guaranteed by the federal national mortgage association,
8 federal home loan mortgage corporation, government national mortgage
9 association, or other government-sponsored enterprise;

10 ~~((+4))~~ (d) Participations or obligations which have been subjected
11 by one or more government agencies to a trust or trusts for which an
12 executive department, agency, or instrumentality of the United States
13 has been named to act as trustee;

14 ~~((+5))~~ (e) Share or deposit accounts of other financial
15 institutions, the accounts of which are federally insured or insured or
16 guaranteed by another insurer or guarantor approved by the director.
17 The shares and deposits made by a credit union under this subsection
18 (1)(e) may exceed the insurance or guarantee limits established by the
19 organization insuring or guaranteeing the institution into which the
20 shares or deposits are made;

21 ~~((+6))~~ (f) Common trust or mutual funds whose investment
22 portfolios consist of securities issued or guaranteed by the federal
23 government or an agency of the government;

24 ~~((+7))~~ (g) Up to five percent of the capital of the credit union,
25 in debt or equity issued by an organization owned by the Washington
26 credit union league;

27 ~~((+8))~~ (h) Shares, stocks, loans, or other obligations of
28 organizations whose primary purpose is to strengthen, advance, or
29 provide services to the credit union industry or credit union members.
30 A credit union may in the aggregate invest an amount not to exceed one
31 percent of its assets in organizations under this subsection (1)(h).
32 In addition, a credit union may in the aggregate lend an amount not to
33 exceed one percent of its assets to organizations under this subsection
34 (1)(h). These limits do not apply to investments in, and loans to, an
35 organization:

36 ~~((+a))~~ (i) That is wholly owned by one or more credit unions or
37 federal or out-of-state credit unions; and

1 ~~((b))~~ (ii) Whose activities are limited exclusively to those
2 authorized by this chapter for a credit union;

3 ~~((9))~~ (i) Loans to credit unions, out-of-state credit unions, or
4 federal credit unions. The aggregate of loans issued under this
5 subsection (1)(i) is limited to twenty-five percent of the total shares
6 and deposits of the lending credit union;

7 ~~((10))~~ (j) Key person insurance policies, the proceeds of which
8 inure exclusively to the benefit of the credit union; ~~((or~~

9 ~~((11))~~ (k) A registered investment company or collective investment
10 fund, as long as the prospectus of the company or fund restricts the
11 investment portfolio to investments and investment transactions that
12 are permissible for credit unions; or

13 (1) Other investments approved by the director upon written
14 application.

15 (2) If a credit union has lawfully made an investment that later
16 becomes impermissible because of a change in circumstances or law, and
17 the director finds that this investment will have an adverse effect on
18 the safety and soundness of the credit union, then the director may
19 require that the credit union develop a reasonable plan for the
20 divestiture of the investment.

21 **Sec. 9.** RCW 31.12.438 and 2001 c 83 s 20 are each amended to read
22 as follows:

23 (1) A credit union may invest in real property or leasehold
24 interests primarily for its own use or the use of a credit union
25 service organization in conducting business, including, but not limited
26 to, structures and fixtures attached to real property, subject to the
27 following limitations:

28 (a) The credit union's net worth equals at least five percent of
29 the total of its share and deposit accounts;

30 (b) The board approves the investment; and

31 (c) The aggregate of all such investments does not exceed seven and
32 one-half percent of the total of its share and deposit accounts.

33 (2) If the real property or leasehold interest is acquired for
34 future expansion, the credit union must ~~((satisfy the use requirement~~
35 ~~in subsection (1) of this section))~~ partially occupy the premises
36 within three years after the credit union makes the investment, if the

1 premises are improved at the time of acquisition, or within six years
2 after the credit union makes the investment, if the premises are
3 unimproved at the time of acquisition.

4 (3) The director may, upon written application, waive any of the
5 limitations listed in subsection (1) or (2) of this section, and the
6 director may adopt rules to interpret this section.

7 **Sec. 10.** RCW 31.12.461 and 2001 c 83 s 21 are each amended to read
8 as follows:

9 (1) For purposes of this section, the merging credit union is the
10 credit union whose charter ceases to exist upon merger with the
11 continuing credit union. The continuing credit union is the credit
12 union whose charter continues upon merger with the merging credit
13 union.

14 (2) A credit union may be merged with another credit union with the
15 approval of the director and in accordance with requirements the
16 director may prescribe. The merger must be approved by a (~~two-~~
17 ~~thirds~~) majority vote of the board of each credit union and a
18 two-thirds majority vote of those members of the merging credit union
19 voting on the merger at a membership meeting. The requirement of
20 approval by the members of the merging credit union may be waived by
21 the director if the merging credit union is in imminent danger of
22 insolvency.

23 (3) The property, rights, and interests of the merging credit union
24 transfer to and vest in the continuing credit union without deed,
25 endorsement, or instrument of transfer, although instruments of
26 transfer may be used if their use is deemed appropriate. The debts and
27 obligations of the merging credit union that are known or reasonably
28 should be known are assumed by the continuing credit union. The
29 continuing credit union shall cause to be published notice of merger
30 once a week for three consecutive weeks in a newspaper of general
31 circulation in the county in which the principal place of business of
32 the merging credit union is located. The notice of merger must also
33 inform creditors of the merging credit union how to make a claim on the
34 continuing credit union, and that if a claim is not made upon the
35 continuing credit union within thirty days of the last date of
36 publication, creditors' claims that are not known by the continuing
37 credit union may be barred. Except for claims filed as requested by

1 the notice, or debts or obligations that are known or reasonably should
2 be known by the continuing credit union, the debts and obligations of
3 the merging credit union are discharged. Upon merger, the charter of
4 the merging credit union ceases to exist.

5 (4) Mergers are effective after the thirty-day notice period to
6 creditors and all regulatory waiting periods have expired, and upon
7 filing of the credit union's articles of merger by the secretary of
8 state, or a later date stated in the articles, which in no event may be
9 later than ninety days after the articles are filed.

10 **Sec. 11.** RCW 31.12.630 and 1997 c 397 s 58 are each amended to
11 read as follows:

12 The director may request a special meeting of the board of a credit
13 union if the director believes that a special meeting is necessary for
14 the welfare of the credit union or the purposes of this chapter. The
15 director's request for a special board meeting must be made in writing
16 to the secretary of the board (~~and the request must be handled in the~~
17 ~~same manner as a call for a special meeting under RCW 31.12.195)). On
18 receipt of such a request, the secretary shall designate a time and
19 place for the special board meeting, which shall be held within thirty
20 days after receipt of the request. The director may require the
21 attendance of all of the directors at the special board meeting, and an
22 absence unexcused by the director constitutes a violation of this
23 chapter.~~

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