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**SENATE BILL 5144**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Angel, Mullet, and Hobbs

AN ACT Relating to the Washington state credit union act; amending RCW 31.12.055, 31.12.065, 31.12.195, 31.12.246, 31.12.267, 31.12.326, 31.12.335, 31.12.386, 31.12.404, and 31.12.413; reenacting and amending RCW 31.12.005; and reenacting RCW 31.12.436.

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

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

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

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

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

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

(a) The facility is a staffed physical facility;

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

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

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

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

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

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

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

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

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

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

(12) "Insolvency" means:

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

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

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

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

(15) "Material violation of law" means:

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

(i) Law;

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

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

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

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

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

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

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

((~~(18)~~)) (17) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

((~~(19)~~)) (18) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

((~~(20)~~)) (19) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

((~~(21)~~)) (20) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

((~~(22)~~)) (21) "Principally" or "primarily" means more than one-half.

((~~(23)~~)) (22) "Senior operating officer" includes:

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

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

((~~(24)~~)) (23) "Significantly undercapitalized" means a net worth to total assets ratio of less than four percent.

((~~(25)~~)) (24) "Small credit union" means a credit union with up to ten million dollars in total assets.

((~~(26)~~)) (25) "Unsafe or unsound condition" means, but is not limited to:

(a) If the credit union is insolvent;

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

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

(d) If the credit union is significantly undercapitalized.

((~~(27)~~)) (26) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits.

**Sec.**  RCW 31.12.055 and 1997 c 397 s 6 are each amended to read as follows:

(1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

(a) The initial name and location of the credit union;

(b) That the duration of the credit union is perpetual;

(c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable law;

(d) The number of its directors, which must not be less than five or greater than fifteen, and the names of the persons who are to serve as the initial directors;

(e) The names of the incorporators;

(f) ((~~The initial par value, if any, of the shares of the credit union;~~

~~(g)~~)) The extent, if any, to which personal liability of directors is limited;

((~~(h)~~)) (g) The extent, if any, to which directors, supervisory committee members, officers, employees, and others will be indemnified by the credit union; and

((~~(i)~~)) (h) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the articles of incorporation in triplicate to the director.

**Sec.**  RCW 31.12.065 and 2001 c 83 s 2 are each amended to read as follows:

(1) Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

(a) The name of the credit union;

(b) The field of membership of the credit union;

(c) Reasonable qualifications for ((~~membership in~~)) admission as a member of the credit union, ((~~including, but not limited to, the minimum number of shares, and the payment of a membership fee, if any, required for membership,~~)) and the procedures for expelling a member;

(d) The number of directors and supervisory committee members, and the length of terms they serve and the permissible term length of any interim director or supervisory committee member;

(e) Any qualification for eligibility to serve on the credit union's board or supervisory committee;

(f) The number of credit union employees that may serve on the board, if any;

(g) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee will be notified of meetings;

(h) The timing of the annual membership meeting;

(i) The manner in which members may call a special membership meeting;

(j) The manner in which members will be notified of membership meetings;

(k) The number of members constituting a quorum at a membership meeting;

(l) Provisions, if any, for the indemnification of directors, supervisory committee members, officers, employees, and others by the credit union, if not included in the articles of incorporation; and

(m) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the bylaws in duplicate to the director.

**Sec.**  RCW 31.12.195 and 2015 c 114 s 2 are each amended to read as follows:

(1) ((~~Unless a unanimous vote by a supervisory committee is required for a suspension pursuant to RCW 31.12.345,~~)) A special membership meeting of a credit union may be called by:

(a) A majority vote of the board((~~, a majority vote of the supervisory committee, or upon~~));

(b) Written ((~~application of~~)) petition signed or similarly authenticated by at least ten percent or two thousand of the members of a credit union, whichever is less;

(c) A unanimous vote of the supervisory committee for the purpose of presenting and discussing a special report by the supervisory committee regarding the failure of the board to adequately respond within a reasonable time frame to findings or recommendations previously provided to the board by the supervisory committee pursuant to RCW 31.12.335; or

(d) Unanimous vote of the supervisory committee to suspend a director for cause pursuant to RCW 31.12.345 if the supervisory committee has provided the director and the board with written notice of such cause and a statement of reasons why cause was found, and the board and the director have failed to act within a reasonable period to rectify the activity that constitutes cause.

(2) A ((~~request for~~)) call of a special membership meeting of a credit union shall be in writing submitted to the secretary of the credit union by the board, the petitioners, or the supervisory committee as applicable, and shall state specifically the purpose or purposes for which the meeting is called((~~. At this meeting, only those agenda items detailed in the written request may be considered~~)) and the agenda item or items for consideration by the members at the meeting. If the special membership meeting is ((~~being~~)) called for the removal of one or more directors or supervisory committee members, the ((~~request~~)) call shall state the name of ((~~the director or directors~~)) each individual whose removal is sought.

(3)(a) Upon receipt of a ((~~request~~)) call for a special membership meeting, the secretary of the credit union shall ((~~designate~~)) determine whether the call satisfies the requirements of this section. If so, the secretary shall determine the date, time, and place at which the special membership meeting will be held, and provide notice of the special membership meeting in accordance with the requirements of this subsection. The ((~~designated place of the~~)) special membership meeting must be held at a reasonable location within the county in which the principal place of business of the credit union is located, unless provided otherwise by the bylaws. The ((~~designated time of the~~)) special membership meeting must be held no later than ninety days after the ((~~request~~)) date on which the call is received by the secretary.

(b) The secretary shall give notice of the special membership meeting at least thirty days before the ((~~special membership~~)) date of the meeting, or within such other reasonable time period as may be provided by the bylaws. The notice must ((~~include~~)) state the purpose or purposes for which the special membership meeting is called, and((~~,~~)) the agenda items for the meeting. If the special membership meeting is ((~~being~~)) called for the removal of one or more directors((~~,~~)) or supervisory committee members ((~~of a supervisory committee~~)), the notice must state the name of ((~~the director or directors, or member or members of the supervisory committee,~~)) each individual whose removal is sought.

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

(5) At the special membership meeting, only those agenda items that are stated in the notice for the meeting may be considered.

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

**Sec.**  RCW 31.12.246 and 1997 c 397 s 16 are each amended to read as follows:

(1) The members of a credit union may remove a director of the credit union at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a director, the members may at the same special membership meeting elect an interim director to complete the remainder of the former director's term of office or authorize the board to appoint an interim director as provided in RCW 31.12.225.

(2) The members of a credit union may remove a supervisory committee member at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a supervisory committee member, the members may at the same special membership meeting elect an interim supervisory committee member to complete the remainder of the former supervisory committee member's term of office or authorize the supervisory committee to appoint an interim supervisory committee member as provided in RCW 31.12.326.

**Sec.**  RCW 31.12.267 and 2010 c 87 s 3 are each amended to read as follows:

(1) ((~~Directors, board officers, supervisory committee members, and senior operating officers~~)) Officials owe a fiduciary duty to the credit union, and must discharge the duties of their ((~~respective~~)) positions:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the ((~~director or officer~~)) official reasonably believes to be in the best interests of the credit union.

(2) In discharging the duties of ((~~a director, a director~~)) an official, the official is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the credit union whom the ((~~director~~)) official reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the ((~~director~~)) official reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors or supervisory committee of which the ((~~director~~)) official is not a member if the ((~~director~~)) official reasonably believes the committee merits confidence.

(3) ((~~A director~~)) An official is not acting in good faith if the ((~~director~~)) official has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) ((~~A director~~)) An official is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) As used in this section, "official" means a director, board officer, supervisory committee member, or senior operating officer of the credit union.

**Sec.**  RCW 31.12.326 and 2015 c 114 s 5 are each amended to read as follows:

(1) A supervisory committee of at least three members must be elected at the annual membership meeting of the credit union. Members of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until their successors are qualified and elected or appointed. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year.

(2) At least one supervisory committee member may attend each regular meeting of the board. However, supervisory committee members may be excluded from executive sessions of board meetings.

(3)(a) If a supervisory committee member is absent from more than one-third of the committee meetings in any twelve-month period in a term without being reasonably excused by the committee, the member shall no longer serve as a member of the committee for the period remaining in the term.

(b) The supervisory committee shall promptly notify the member that he or she shall no longer serve as a committee member. Failure to provide notice does not affect the termination of the member's service under (a) of this subsection.

((~~(3)~~)) (4) A supervisory committee member must be a natural person and a member of the credit union. If a member of the supervisory committee ceases to be a member of the credit union, the member shall no longer serve as a committee member. The chairperson of the supervisory committee may not serve as a board officer.

((~~(4)~~)) (5) Except as provided in subsection ((~~(5)~~)) (6) of this section, any vacancy on the committee must be filled by an interim member appointed by the committee, unless the interim member would serve a term of fewer than ninety days. Interim members appointed to fill vacancies created by expansion of the committee will serve until the next annual meeting of members. Other interim members may serve out the unexpired term of the former member, unless provided otherwise by the credit union's bylaws. However, if all positions on the committee are vacant at the same time, the board may appoint interim members to serve until the next annual membership meeting.

((~~(5)~~)) (6) In the case of a merger between two credit unions pursuant to RCW 31.12.461, a supervisory committee member of the merging credit union may continue to serve as a supervisory committee member of the continuing credit union for a period not to exceed the equivalent of the duration of his or her unexpired term on the supervisory committee of the merging credit union, provided that the approved plan of merger or other agreement approved by the director provides for such service on the continuing credit union's supervisory committee with a corresponding expansion in the size of the continuing credit union's supervisory committee.

((~~(6)~~)) (7) No operating officer or employee of a credit union may serve on the credit union's supervisory committee. No more than one director may be a member of the supervisory committee at the same time, unless provided otherwise by the credit union's bylaws. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee.

(8) A credit union may establish an audit committee in lieu of a supervisory committee. An audit committee and its members possess the same duties and powers, and are subject to the same limitations as a supervisory committee and its members pursuant to this chapter.

**Sec.**  RCW 31.12.335 and 2001 c 83 s 11 are each amended to read as follows:

(1) The supervisory committee of a credit union shall:

(a) ((~~Meet at least quarterly;~~

~~(b)~~)) Keep ((~~fully~~)) informed as to the financial condition of the credit union and the decisions of the credit union's board;

((~~(c)~~)) (b) Perform or arrange for a complete annual audit of the credit union and a verification of its members' accounts and provide any related findings and recommendations to the board; ((~~and~~

~~(d) Report its findings and recommendations to the board and make~~))

(c) Provide an annual report to members at each annual membership meeting;

(d) Perform or arrange for additional audits as requested by the board or management or as deemed necessary by the supervisory committee and provide any related findings and recommendations to management or the board as deemed appropriate by the supervisory committee;

(e) Monitor the implementation of management responses to material adverse findings in audits and regulatory examinations;

(f) Implement a process for the supervisory committee to receive and respond to whistleblower complaints; and

(g) Perform any additional duties as specified by the board or in the credit union's bylaws.

(2) ((~~At least one supervisory committee member may attend each regular board meeting~~)) The supervisory committee may in its sole discretion retain, at the credit union's expense, independent counsel or other professional advisors or consultants as necessary to perform the duties under this section.

**Sec.**  RCW 31.12.386 and 1997 c 397 s 28 are each amended to read as follows:

(1) No member may have more than one vote ((~~regardless of the number of shares held by the member~~)). A natural person may not hold more than one membership in a credit union on behalf of himself or herself. An organization having membership in a credit union may cast one vote through ((~~its~~)) a natural person agent duly authorized in writing.

(2) Members may vote, as prescribed in the credit union's bylaws, by mail ballot, absentee ballot, or other method. However, no member may vote by proxy.

(3) A member who is not at least eighteen years of age is not eligible to vote as a member unless otherwise provided in the credit union's bylaws.

**Sec.**  RCW 31.12.404 and 2015 c 114 s 9 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a credit union has under the laws of this state, a credit union has the powers and authorities that a federal credit union had on December 31, 1993, or a subsequent date not later than ((~~July 24, 2015~~)) the effective date of this section.

(2) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a credit union has under subsection (1) of this section, a credit union has the powers and authorities that a federal credit union has, and an out-of-state credit union operating a branch in Washington has, subsequent to ((~~July 24, 2015~~)) the effective date of this section, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between credit unions and federal or out-of-state credit unions. However, a credit union:

(a) Must still comply with RCW 31.12.408; and

(b) Is not granted the field of membership powers or authorities of any out-of-state credit union operating a branch in Washington.

(3) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or out-of-state credit unions apply to credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted credit unions solely under this section.

(4) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters.

**Sec.**  RCW 31.12.413 and 2015 c 114 s 10 are each amended to read as follows:

(1) A credit union may apply in writing to the director for designation as a low-income credit union. ((~~The criteria~~)) To qualify for approval of this designation ((~~are as follows:~~

~~(a)~~)), the credit union must provide evidence satisfactory to the director that at least fifty percent of a substantial and well-defined segment of the credit union's members or potential primary members are low-income members((~~;~~

~~(b) The credit union must submit an acceptable written plan on marketing to and serving the well-defined segment;~~

~~(c) The credit union must agree to submit annual reports to the director on its service to the well-defined segment; and~~

~~(d) The credit union must submit other information and satisfy other criteria as may be required by the director~~)).

(2)((~~(a)~~)) Among other powers and authorities, a low-income credit union may:

((~~(i)~~)) (a) Issue secondary capital accounts approved in advance by the director upon application of the credit union; and

((~~(ii)~~)) (b) Accept and maintain shares and deposits from nonmembers.

((~~(b) A secondary capital account is:~~

~~(i) Over one hundred thousand dollars, or a higher amount as established by the director;~~

~~(ii) Nontransactional;~~

~~(iii) Owned by a nonnatural person; and~~

~~(iv) Subordinate to other creditors.~~))

(3) The director may adopt rules for the organization and operation of low-income credit unions including, but not limited to, rules concerning secondary capital accounts and requiring disclosures to the purchasers of the accounts.

**Sec.**  RCW 31.12.436 and 2015 c 123 s 4 and 2015 c 114 s 11 are each reenacted to read as follows:

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

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

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

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

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

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

(f) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Northwest credit union association or its successor credit union association;

(h) Shares, stocks, loans, or other obligations of organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry or credit union members. A credit union may invest in or make loans to organizations under this subsection (1)(h) in an aggregate amount not to exceed five percent of its assets. This limit does not apply to investments in, and loans to, an organization:

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

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

(i) Loans to credit unions, out-of-state credit unions, or federal credit unions. However, the aggregate of loans issued under this subsection (1)(i) is limited to twenty-five percent of the total shares and deposits of the credit union making the loans;

(j) Key person insurance policies and investment products related to employee benefits, the proceeds of which inure exclusively to the benefit of the credit union;

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

(l) Other investments approved by the director upon written application.

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

**--- END ---**