

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 269 (Portantino) – As Amended June 7, 2021

**SENATE VOTE:** 38-0

**SUBJECT:** Credit unions

**SUMMARY:** Makes assorted changes to California Credit Union Law, including changes related to examinations, the expulsion of members, inactive accounts, and audit committees. Specifically, **this bill:**

- 1) Deems a National Credit Union Administration (NCUA) examination a Department of Financial Protection and Innovation (DFPI) examination if it is part of an alternative examination schedule approved by DFPI and NCUA.
- 2) Adds abusive, threatening, or harassing behavior toward credit union staff, volunteers, or members, or the abuse of credit union systems or property to the list of reasons for which the directors of a credit union may expel a member. Provides that the expulsion of a credit union member for any of these reasons takes effect immediately and does not require advance notice or an opportunity to be heard, if the board of directors or its designee determines that immediate expulsion is reasonably necessary for the protection of the credit union or its staff, volunteers, or members, but further provides that a credit union member who is expelled for abusive behavior without prior written notice must be notified of the expulsion in writing within five business days following the effective date of that expulsion.
- 3) Authorizes credit union directors to delegate the power to expel members for cause to a membership committee or an executive committee, pursuant to a written membership plan adopted by the board of directors.
- 4) Allows an expelled member to appeal that expulsion to the board of directors in a manner approved by the board of directors. Requires any appeal procedures adopted by the board to be reasonable and to include, at a minimum, written notice to the expelled member regarding the effective date of the member's expulsion, a description of the procedures the member must take if he or she wishes to appeal their expulsion, and written notice to the member of the board's final determination of that member's appeal.
- 5) Provides that a member who remains on inactive status for at least 90 days after written notice from a credit union may be deemed by that credit union to have voluntarily withdrawn from credit union membership. Further provides that a member whose funds have been remitted to the State Controller's Office for purposes of escheat shall be deemed to have voluntarily withdrawn from credit union membership.
- 6) Allows a state-chartered credit union accept deposits from non-member credit unions.
- 7) Adds a definition of "officer" and modifies the definition of "official" in the provision of law that prescribes rules applicable to loans or extensions of credit extended by a credit union to a

credit union official. As amended, the term officer includes persons previously included in the definition of an official.

- 8) Adds members of the audit committee to the list of persons prohibited from receiving any compensation for their services as a member of that board or committee, except as specified, and grants the audit specified duties and authorities granted to the supervisory committee.

#### **EXISTING LAW:**

- 1) Provides for the California Credit Union Law (Financial Code Section 14000 et. seq.), administered by DFPI, which prescribes the rules applicable to any person, other than a federal credit union, which engages in business as a credit union in this state (Financial Code Section 14001.1).
- 2) Authorizes DFPI to investigate the affairs and examine the books, accounts, records, files, and any office within or outside this state that is used in the business of a credit union, and provides that an examination made by the commissioner in conjunction with or with assistance from NCUA or a credit union regulatory agency of another state is deemed to be an examination made by the commissioner (Financial Code Section 14250).
- 3) Prohibits a member of a credit union's board of directors, supervisory committee, or credit committee from receiving any compensation for his or her services as a member of that board or committee but allows that individual to be provided with reasonable health, accident, and similar insurance. Provides that, notwithstanding the aforementioned prohibition, a director or committee member may be reimbursed for actual expenses incurred in the performance of that person's duties, as specified (Financial Code Section 14410).
- 4) Authorizes the directors of a credit union to expel a member for any of the following causes: conviction of a criminal offense; failure to carry out contracts, agreements, or obligations with the credit union; and refusal to comply with the provisions of the California Credit Union Law or of the credit union's bylaws. Allows a member who is expelled by the board of directors to appeal his or her expulsion, and provides that an expulsion may be revoked by a two-thirds vote of the members present at a special meeting to consider the matter (Financial Code Section 14456).
- 5) Provides, within the Nonprofit Mutual Benefit Corporation Law, that any expulsion, suspension, or termination must be done in a fair and reasonable manner, and provides that one component of a fair and reasonable manner includes providing 15 days' prior notice of and the reasons for the expulsion, suspension, or termination to the person who is the subject of that action (Corporations Code Section 7341). Requires credit unions to comply with Corporations Code Section 7341 when expelling members (Section 14801).
- 6) Provides that a credit union member who has no outstanding obligations with a credit union and whose share account is below the amount established by the credit union's bylaws may be transferred to inactive member status, but that when one or more of the aforementioned conditions ceases to be applicable, an inactive member may be transferred back to regular member status (Financial Code Section 14811).

- 7) Prescribes rules applicable to loans or extensions of credit extended by a credit union to a credit union official, which prohibit any such obligation from having terms that are more favorable than those extended to credit union members and which require all credit union officials to have an equal opportunity to enter into obligations with the credit union (Financial Code Section 15050).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by Legislative Counsel.

**COMMENTS:**

1) **Purpose**

According to the author:

The California Credit Union League champions a “state-charter modernization bill” every few years to help keep state-chartered credit unions on an even playing field with both federally chartered credit unions and other financial institutions. Between modernization clean up bills, the League compiles a list of issues brought to them by their members. SB 269 is the culmination of many discussions between state-chartered credit unions, their league, and other stakeholders

2) **Background**

Credit unions in California operate under a dual licensing framework and are chartered (or licensed) by the state or by the federal government. The type of charter type determines which agency supervises the credit union, with the NCUA regulating federally-chartered credit unions and DFPI regulating state-chartered credit unions. California’s state charter provides similar authorities, requirements and characteristics as the federal charter, and as of January 31, 2021, there were 121 state-chartered credit unions and 169 federally-chartered credit unions operating in California.

At first glance, it is unclear if there are any direct societal benefits of licensing some credit unions through a state charter and other credit unions through a federal charters. However, proponents of the dual system argue that it encourages competition between federal and state regulators and encourages governments to seek new ways to foster an innovative and safe banking environment. For example, the Washington Department of Financial Institution makes the following argument:

The competitive nature of the dual chartering system has prompted individual states to be responsive to the needs of their constituent credit unions and citizens, thereby resulting in new products and powers. A choice of charter forces regulators to update and improve examination techniques and examiner training, maximize efficiency and control costs for fear that supervised institutions might abandon them out of frustration. Moreover, regulatory authorities are encouraged to take a healthier, more positive posture on financial innovation and risk-taking when there are charter alternatives.<sup>1</sup>

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<sup>1</sup> <https://dfi.wa.gov/credit-unions/dual-charter>

### 3) Major provisions

As noted above, this bill makes a variety of modifications to California's state credit union charter. These changes are meant to update current law to reflect modern industry practices or to achieve more direct parity with the federal charter. These changes include:

- a) **Nonmember deposits.** Under current state and federal rules, federally chartered credit unions and low-income designated credit unions can accept nonmember deposits from other credit unions, but California state-chartered credit unions cannot. The author's office notes that deposits from other credit unions can help a credit union meet liquidity needs and increase loan demand. This bill allows a state-chartered credit union to accept nonmember deposits from other credit unions.
- b) **DFPI exams.** Current law allows DFPI to alternate examinations of state banks with a federal regulator if the commissioner determines that a federal regulator's examination fulfills the requirements of the examination. Similarly, this bill allows for an alternating examination schedule approved by both DFPI and NCUA.
- c) **Expulsion of members.** This bill also adds "abusive behavior" as a reason that a member may be expelled from a credit union and authorizes a board to delegate expulsion authority to a committee. An expelled credit union member may appeal the expulsion directly to the board or the delegated committee. These changes are intended to update and improve the expulsion and appeals process.
- d) **Inactive accounts.** Current law does not provide mechanism for a credit union to close an inactive account. This bill provides such a mechanism and also requires a credit union wishing to close an inactive account to notify the credit union member in writing that his or her account has been transferred to inactive status, list steps the member may take to have his or her account reinstated to active status, and inform the member how long he or she has to activate their account before it is deemed closed.

### 4) Recent amendments.

In addition to the major provisions noted above, recent author amendments also bolster the role of a credit union's audit committee and aligns the audit committee's duties with the duties of a supervisory committee. Typically, a credit union's supervisory committee acts as a "watchdog" of the credit union and has the power to inspect the credit union's financials, including the credit union's securities and accounts. However, this bill's sponsor notes that some credit unions are shifting away from using a supervisory committee and opting to form an audit committee instead, which is allowed under current law. However, an audit committee's powers are more limited, and recent amendments to this bill aim to bolster an audit committee's functions as follows:

- a) Extends to the audit committee the supervisory committee's authority to i) suspend the credit committee or any member, the credit manager, any director, or any officer, ii) call a meeting of the members of consider any violation of Credit Union Law, the credit union's bylaws, or any unsafe or authorized practices, iii) call a special meeting of the members to take action pm the suspension of a credit committee member.

- b) Authorizes the board, by a majority vote, to appoint or remove an audit committee member and authorizes DFPI to direct the board to replace any or all audit committee members following an investigation showing that the audit committee is not performing its duties as established under Credit Union law.

**5) Recent Legislation.**

- a) SB 1031 (Portantino), of the 2020-21 Legislative Session, was substantially similar to this bill. SB 1031 was voluntarily pulled by its author prior to its hearing in the Senate Banking and Financial Institutions Committee, in response to the COVID-19 pandemic and limited capacity for the Legislature to enact new legislation.
- b) AB 2862 (Limon), Chapter 267, Statutes of 2018, enacted five provisions intended to modernize the California Credit Union Law and increase parity between state-chartered and federally-chartered credit unions.
- c) AB 2274 (Dababneh), Chapter 353, Statutes of 2016, enacted six provisions intended to modernize the California Credit Union Law and increase parity between state-chartered and federally-chartered credit unions.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Credit Union League

**Opposition**

None on file.

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