

Senate Bill No. 1439

CHAPTER 539

An act to amend Sections 14102, 14155, 14157, 14250, 14254.5, 14256, 14400, 14407, 14408, 14409, 14410, 14456, 14553, 14601, 14602, 14651, 14652, 14653, 14700, 14703, 14766, 14800, 14803, 14805, 14806, 14851, 14858, 14860, 14862, 14901, 14950, 14951, 14952, 14959, 15001, 15050, 15100, 15201, 15202, 15203, 15250, and 15251 of, to add Sections 14202.5, 14353.5, and 14452.5 to, to repeal Sections 14254, 14406, 14859, 14903, 14904, 15000, and 15307 of, to repeal Chapter 11 (commencing with Section 16100) of Division 5 of, and to repeal and add Sections 14252, 14350, 14351, 14352, and 14353 of, the Financial Code, relating to credit unions.

[Approved by Governor September 16, 1998. Filed
with Secretary of State September 17, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1439, Brulte. Financial institutions: credit unions.

Existing law provides for the regulation of credit unions by the Commissioner of Financial Institutions. Existing law, among other things, prescribes certain requirements with respect to financial examinations of credit unions, charges and assessments imposed on credit unions to defray certain administrative costs, and the operation and management of credit unions. Existing law also establishes the California Credit Union Share Guaranty Corporation to, among other things, guaranty payment of all shares issued by participating credit unions, subject to certain limitations.

This bill would revise and recast certain of those requirements and would repeal the California Credit Union Share Guaranty Corporation.

The people of the State of California do enact as follows:

SECTION 1. Section 14102 of the Financial Code is amended to read:

14102. (a) Amendments to the articles of incorporation of any credit union may be adopted by resolution of the board of directors, which is also adopted by a vote of a majority of the members of the credit union present, in person or by proxy, as provided in the credit union's bylaws, at any regular or special meeting of the members for which notice of the proposed amendments has been given; provided, however, that a minimum vote of at least 10 percent of the entire membership entitled to vote on the question votes in favor of the



amendment and those voting in favor of the amendment constitute a majority of the members participating in the vote.

(b) The commissioner may approve the amendment according to the resolution adopted by the board of directors if approved by less than 10 percent of the entire membership as provided in this section if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the amendment or the ballot for written vote on the amendment was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the amendment might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the amendment.

(c) Notwithstanding subdivision (a) and Section 7812 of the Corporations Code, a credit union may amend its articles of incorporation to change its name with the approval of its board of directors and without the approval of its members.

SEC. 1.4. Section 14155 of the Financial Code is amended to read:

14155. Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a certificate to act as a credit union or an expansion of the field of membership of an existing credit union for any of the following reasons:

(a) The field of membership of the applicant is contrary to the principles of organizing credit unions, including principles of organizing credit unions based on common bond of occupation, association, or groups within a well-defined neighborhood, community or rural district.

(b) A false statement of a material fact has been made in the application for certificate.

(c) Any officer, director, or committee member of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(d) The applicant or any officer, director, or committee member of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(e) The number of persons eligible for membership is less than 500.

(f) The applicant's showing as to the economic feasibility of the proposed credit union is inadequate. Notwithstanding anything to the contrary, nothing shall prohibit a credit union from admitting to membership any corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares pursuant to Sections 14650 and 14651 and any limited liability



company formed to provide services to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

SEC. 1.6. Section 14157 of the Financial Code is amended to read:

14157. (a) A credit union organized and duly qualified as a credit union in another state of the United States shall become a credit union organized and operating pursuant to this division if in compliance with each of the following requirements:

(1) The credit union has filed a statement with the Secretary of State pursuant to Section 2105 of the Corporations Code.

(2) The commissioner has approved an application filed by the credit union that has not been suspended or revoked.

(3) The interest rate of the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted by the jurisdiction under whose laws it is organized.

(4) The credit union has obtained bond or insurance coverage as prescribed in Section 14409.

(5) The credit union has obtained insurance or guaranty for its members' share accounts as prescribed in Section 14858.

(6) The credit union submits an annual audit report to the commissioner as prescribed in Article 2 (commencing with Section 14250) of Chapter 3.

(7) The credit union pays the cost of examination or services performed in accordance with Section 14353.5.

(8) The credit union pays to the commissioner an annual fee of two hundred fifty dollars (\$250). The credit union is not subject to Section 14350, 14351, or 14352.

(b) For the purpose of implementing the provisions of this section, the commissioner may cooperate with the administrators of the credit union laws of other states and the commissioner may share with them information received in the administration of this division.

(c) The commissioner may disapprove an application filed pursuant to this section, or upon reasonable notice and opportunity for hearing suspend or revoke approval of an application, if the commissioner finds that the standards of organization, operation and regulation of the credit union, including, but not limited to, the laws and regulations of the jurisdiction in which it is organized, do not reasonably conform to the standards of organization, operation and regulation established pursuant to this division, or that 50 percent or more of the members of the credit union are, or are reasonably expected to be, residents of this state.

SEC. 1.8. Section 14202.5 is added to the Financial Code, to read:

14202.5. If and to the extent that any provision of this division is preempted by federal law, the provision does not apply and shall not be enforced.

SEC. 2. Section 14250 of the Financial Code is amended to read:



14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, and files used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of every credit union referred to in paragraph (1).

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner make an examination onsite at the offices of a credit union.

SEC. 3. Section 14252 of the Financial Code is repealed.

SEC. 4. Section 14252 is added to the Financial Code, to read:

14252. (a) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

(b) Each credit union shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify and any other information that the commissioner may specify.

(2) The audit report shall be based upon an audit of the credit union conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may specify.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and



content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

SEC. 5. Section 14254 of the Financial Code is repealed.

SEC. 6. Section 14254.5 of the Financial Code is amended to read:

14254.5. Within 10 business days of opening, closing, or relocating a branch office, a credit union shall notify the commissioner in writing of the action, including the street and mailing addresses of the branch office.

SEC. 7. Section 14256 of the Financial Code is amended to read:

14256. (a) If any credit union fails to file with the commissioner any report required by this division on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the failure is grounds for the suspension or revocation of the certificate authorizing the credit union to act as a credit union.

(b) If any credit union fails to file with the commissioner any report required by this division or by any order or regulation of the commissioner, on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the commissioner may, after notice and hearing, order the credit union to pay to the commissioner a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each day that the report is delinquent or deficient.

SEC. 8. Section 14350 of the Financial Code is repealed.

SEC. 9. Section 14350 is added to the Financial Code, to read:

14350. The commissioner shall annually levy on and collect from credit unions holding certificates authorizing them to act as credit unions, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's opinion to (a) meet the expenses of the department in administering this division and other laws relating to credit unions or the credit union business that are not otherwise provided for and (b) provide a reasonable reserve for contingencies.

SEC. 10. Section 14351 of the Financial Code is repealed.

SEC. 11. Section 14351 is added to the Financial Code, to read:

14351. (a) The amount of the annual assessment on any credit union holding a certificate authorizing it to act as a credit union shall be the greater of (1) one thousand five hundred dollars (\$1,500) or (2) the sum of the products determined by multiplying (A) increments of the credit union's total assets by (B) percentages of the base assessment rate, according to the following table:



| Total Assets (In millions) | Percentage of Base Assessment Rate |
|-------------------------------|---------------------------------------|
| First \$3 | 85.0% |
| Next \$3 | 30.0% |
| Next \$4 | 12.5% |
| Excess over \$10 | 11.0% |

(b) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents (\$2.20) per one thousand dollars (\$1,000) of total assets.

SEC. 12. Section 14352 of the Financial Code is repealed.

SEC. 13. Section 14352 is added to the Financial Code, to read:

14352. For purposes of the annual assessment, the total assets of a credit union holding a certificate authorizing it to act as a credit union shall be determined as of a date fixed by the commissioner. However, if a credit union does not hold a certificate authorizing it to act as a credit union as of that date but does so as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

SEC. 14. Section 14353 of the Financial Code is repealed.

SEC. 15. Section 14353 is added to the Financial Code, to read:

14353. (a) Whenever the commissioner levies an annual assessment on credit unions holding certificates authorizing them to act as credit unions, the commissioner shall promptly mail or otherwise deliver to each credit union assessed an invoice that shows (1) the amount of the credit union's annual assessment and (2) the date when the annual assessment is due and payable.

(b) The annual assessment on a credit union holding a certificate authorizing it to act as a credit union becomes a liability of the credit union on the date on which the commissioner levies the annual assessment.

(c) If the annual assessment on a credit union holding a certificate authorizing it to act as a credit union is not paid on time, the commissioner shall be entitled to and may collect, in addition to the amount of the annual assessment, a penalty of 5 percent of the amount of the unpaid annual assessment for each month or part of a month that the payment is delinquent.

SEC. 16. Section 14353.5 is added to the Financial Code, to read:

14353.5. Whenever the commissioner finds it necessary or advisable to make an extra examination of a credit union, the commissioner may charge the credit union a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the extra examination, and the credit union shall, within 10 days after the mailing or other delivery of a statement by the commissioner, pay the fee charged by the commissioner.

SEC. 17. Section 14400 of the Financial Code is amended to read:

14400. (a) The savings capital of a credit union shall consist of the payments made by members on shares as set forth in the credit union's written savings capital structure policy pursuant to Section 14862.

(b) The equity capital of the credit union shall consist of the credit union's regular reserve account, the undivided earnings account, and any appropriated undivided earnings accounts.

SEC. 17.3. Section 14406 of the Financial Code is repealed.

SEC. 18. Section 14407 of the Financial Code is amended to read:

14407. (a) Whenever the losses of any credit union resulting from a depreciation in the value of its securities or otherwise exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due its shareholders, the credit union may, if approved by a majority of all members at a meeting called to consider the matter, order a reduction of the liability to each of its shareholders, so as to divide the loss equitably among the shareholders. If thereafter the credit union realizes from its assets a greater amount than was fixed in the order of reduction, the excess shall be divided among the shareholders whose assets were reduced, but to the extent of the reduction only.

(b) The commissioner may approve a reduction in the liability on shares approved by less than a majority of all members as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the question was mailed to each member entitled to vote upon the question, (2) the notice disclosed the purpose of the meeting and properly informed the membership that approval of the reduction in liability might be sought pursuant to this subdivision, and (3) that a majority of the votes cast upon the question were in favor of the reduction in liability.

SEC. 19. Section 14408 of the Financial Code is amended to read:

14408. No credit union shall make any gift or donation having a value in excess of one thousand dollars (\$1,000) unless the gift or donation is in the best interest of the credit union, is approved by a resolution of the board of directors and is in conformance with any regulation or order that the commissioner may issue. The resolution of the board of directors approving the gift or donation shall identify the recipient of the gift or donation, state the value of the gift or donation, and specify the basis for the board's determination that the gift or donation is in the best interests of the credit union.

SEC. 20. Section 14409 of the Financial Code is amended to read:

14409. (a) Every credit union shall obtain adequate bond or insurance coverage, for each director, officer, supervisory committee member, and credit committee member, for the credit manager, and for each employee.

(b) The commissioner may adopt regulations setting forth guidelines with respect to the minimum amount of the bond or



insurance coverage deemed adequate. The regulations may be based upon the gross assets of the credit union and may contain a formula or schedule for the calculation of minimum bond or insurance coverage.

SEC. 21. Section 14410 of the Financial Code is amended to read:

14410. (a) No member of the board of directors, supervisory committee, or credit committee shall receive any compensation for his or her services as a member of the board of directors, supervisory committee, or credit committee, but he or she may be provided with reasonable health, accident, and similar insurance. Nothing in this subdivision shall prohibit a member of the board of directors, supervisory committee, or credit committee from receiving nonmonetary compensation that is incidental to the person's service as a member of the board of directors, supervisory committee, or credit committee, if and as approved by regulation or order of the commissioner.

(b) Notwithstanding subdivision (a), a director or committee member may be reimbursed for actual expenses incurred in the performance of his or her duties if reimbursement is made pursuant to the requirements of the commissioner's regulations controlling expense reimbursement by the credit union. Reimbursement for actual expenses may include, among other things, travel expenses incurred on or relating to credit union business, and any other matters, categories, or items of expense that the commissioner may establish by regulation.

(c) Nothing in this section shall prevent any person from receiving compensation for actual services as a general manager, credit manager, loan officer, or other position as an employee of the credit union.

SEC. 22. Section 14452.5 is added to the Financial Code, to read:

14452.5. A vacancy on the board of directors shall be filled in accordance with Section 7224 of the Corporations Code, subject to the following:

(a) A vacancy that exists due to the expiration of the term of a director shall be filled only by the members of a credit union.

(b) If the board of directors elects a director to fill a vacancy, the director so elected shall hold office only until the next annual meeting at which time the members shall elect a director to hold office until the expiration of the term for which elected.

(c) If the members elect a director to fill a vacancy, the director so elected shall hold office until the expiration of the term for which elected.

SEC. 22.5. Section 14456 of the Financial Code is amended to read:

14456. Unless the bylaws expressly reserve any or all of the following duties to the members, the directors have all of the following special duties:



(a) To act upon all applications for membership. The directors may delegate the power to approve applications for new membership to: (1) the chairperson of a membership committee or to an executive committee; or (2) any officer, director, committee member, or employee, pursuant to a written membership plan adopted by the board of directors, provided the board of directors reviews at least quarterly any membership application approved by an officer, director, committee member, or employee.

(b) To expel members for any of the following causes:

(1) Conviction of a criminal offense involving moral turpitude.

(2) Failure to carry out contracts, agreements or obligations with the credit union.

(3) Refusal to comply with the provisions of this division or of the bylaws.

Any members who are expelled by the board of directors have the right to appeal therefrom to the members, in which event, after hearing, the order of suspension may be revoked by a two-thirds vote of the members present at a special meeting to consider the matter.

(c) To determine from time to time the interest rate on obligations with members and to authorize the payment of interest refunds to borrowing members.

(d) To fix the maximum number of shares which may be held by, and, in accordance with Section 15100, establish the maximum amount of obligations which may be entered into with, any one member.

(e) To declare dividends on shares in accordance with the credit union's written capital structure policy and to determine the interest rate or rates which will be paid on certificates for funds.

(f) To amend the bylaws, except where membership approval is required.

(g) To fill vacancies in the credit committee, and to temporarily fill vacancies caused by the suspension of any or all members of the credit committee, pending a meeting of the members to determine whether to affirm the suspension and vacate the office, or to reinstate the member or members.

(h) To direct the deposit or investment of funds, except loans to members.

(i) To designate alternate members of the credit committee who shall serve in the absence or inability of the regular members to perform their duties.

(j) To perform or authorize any action not inconsistent with law or regulation and not specifically reserved by the bylaws for the members, and to perform any other duties as the bylaws may prescribe.

SEC. 23. Section 14553 of the Financial Code is amended to read:

14553. (a) The supervisory committee shall at least once each year make or cause to be made an audit of the books and records and



an examination of the business and affairs of the credit union. The supervisory committee shall make a full report of the assets and liabilities, receipts and disbursements of the credit union to the board of directors. Those reports shall be presented at the annual meeting of members and filed with the records of the credit union.

(b) The supervisory committee may make or cause to be made any supplementary inspections of the securities, cash, and accounts of the credit union or audits as it deems necessary, and submit reports of those audits to the board of directors.

SEC. 24. Section 14601 of the Financial Code is amended to read:

14601. No member of the credit committee or the credit manager or any loan officer shall serve as a member of the supervisory committee.

SEC. 25. Section 14602 of the Financial Code is amended to read:

14602. (a) (1) No credit union shall create any obligation with a credit union member, without the written approval of a majority of all the members of the credit committee, the credit manager, or a loan officer appointed as provided in this section.

(2) Paragraph (1) does not apply to the creation of an obligation in accordance with a credit scoring program, preapproval credit program, or similar program, if the program was adopted by the board of directors, credit committee, or credit manager and complies with a written lending policy on programs of that type established by the board of directors in accordance with Section 15100.

(b) The credit committee or the credit manager may, with the approval of the board of directors, appoint one or more loan officers who shall be authorized to approve obligations with credit union members.

(c) Neither the credit committee, a credit manager, or any loan officer shall have the power to approve membership applications.

(d) No loan officers shall be permitted to approve any extension agreement of any obligation or the refinancing of any obligation except as prescribed in regulations promulgated by the commissioner.

(e) The credit committee, or in the alternative, the credit manager shall be provided with a record of each obligation approved or not approved by any loan officer, within 30 days of the approval or disapproval.

SEC. 25.3. Section 14651 of the Financial Code is amended to read:

14651. (a) Every credit union may invest in the shares of stock of a corporation, or in membership or economic interests of a limited liability company, organized solely for the purpose of providing services to credit unions, provided the corporation or limited liability company is formed by a credit union or group of credit unions.

(b) Every credit union may invest in the securities of a corporation or in membership or economic interests of a limited



liability company that is not a corporation or limited liability company of the type described in subdivision (a) and that provides services to credit unions, provided the investment is approved by the commissioner.

SEC. 25.7. Section 14652 of the Financial Code is amended to read:

14652. Every credit union may invest in securities and other assets described in Chapter 9 (commencing with Section 1000) of the Banking Law as legal investments for savings banks.

SEC. 26. Section 14653 of the Financial Code is amended to read:

14653. Credit unions may invest in a trust organized solely for the purpose of investing in United States government securities and United States government agency securities, provided the trust is formed by an organization composed of credit unions or an organization of credit union associations.

SEC. 27. Section 14700 of the Financial Code is amended to read:

14700. Every credit union shall create and maintain a regular reserve as specified by the commissioner.

SEC. 28. Section 14703 of the Financial Code is amended to read:

14703. (a) A credit union shall establish and maintain an allowance for loan losses account in accordance with generally accepted accounting principles. The commissioner may order the credit union to increase the amount of its allowance for loan losses account if the commissioner finds that the amount of the account is not adequate.

(b) At the close of an accounting period, an adjustment shall be made in an amount equal to the balance in the provision for loan losses expense account. If the balance is a debit, regular reserves shall be charged, and undivided profits shall be credited, and, if the balance is a credit, undivided profits shall be charged and regular reserves shall be credited.

SEC. 29. Section 14766 of the Financial Code is amended to read:

14766. No officer, director, or employee of a credit union, directly or indirectly, shall purchase or be interested in the purchase of, any of the credit union's obligations or assets for an amount less than the book value thereof, unless all the directors of the credit union previously approve the purchase by resolution and a copy of the resolution is delivered to the commissioner immediately after adoption. Every person violating this section shall be liable to the people of this state for each offense in the amount of twice the book value of the assets so purchased.

SEC. 30. Section 14800 of the Financial Code is amended to read:

14800. (a) Every credit union may admit to membership those persons qualified for membership upon the occurrence of either of the following:

(1) Upon the payment of an entrance fee established from time to time by the board of directors.



(2) Upon the purchase of one or more shares in the credit union as provided in the credit union's bylaws.

(b) No officer, director, committee member, or employee of any credit union shall approve a person for admission to membership or admit an applicant for membership in the credit union or extend any benefit or service of the credit union to any person, unless that person is admitted to membership in the credit union pursuant to subdivision (a).

(c) Nothing in subdivisions (a) and (b) shall be construed to limit the powers of a credit union to engage in joint service programs or business relationships for the benefit of their members where some incidental benefit may flow to third parties to the transaction or the authority for a credit union to engage in joint loan programs pursuant to Section 14959.

(d) Nothing in this section prohibits a credit union from admitting to membership a corporation in which the credit union holds shares pursuant to Section 14650 or a corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares or a limited liability company formed to provide services to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

SEC. 31. Section 14803 of the Financial Code is amended to read:

14803. (a) No credit union shall pay any commission or compensation to any person for securing a new member or for getting an existing member to make an additional deposit.

(b) Notwithstanding subdivision (a), a credit union may, pursuant to an incentive policy approved by the board of directors, offer and pay a reasonable incentive or inducement to (1) a nonmember for becoming a member of the credit union, (2) an existing member for depositing additional funds, and (3) an employee or member who assists in getting a nonmember to become a new member of the credit union or who assists in getting an existing member to make an additional deposit.

(c) Nothing in subdivision (a) limits a credit union from using growth in the number of members in the credit union as part of its compensation program for its employees.

SEC. 31.5. Section 14805 of the Financial Code is amended to read:

14805. Special meetings of members may be held upon order of the board of directors. Special meetings of members shall be held upon the written request of 10 members or 3 percent of the membership, whichever is greater. Notice of special meetings shall be given to all members specifying the date, time, place, and purpose of the meeting.

SEC. 32. Section 14806 of the Financial Code is amended to read:



14806. In credit unions formed on or after September 15, 1945, no member shall have more than one vote irrespective of the number of shares held by the member.

SEC. 32.5. Section 14851 of the Financial Code is amended to read:

14851. (a) Every credit union may issue shares (1) to any member qualified pursuant to the credit union's bylaws; (2) to an officer, employee, or agent of nonmember units of federal, Indian tribal, state, or local governments, and political subdivisions thereof when acting in his or her official capacity; and (3) in coownership to a member and any person designated by the member. Coownership, as used herein, includes, but is not limited to, joint tenancy, tenancy in common, or community property forms of ownership. No membership privilege, including voting and obtaining a loan, may be made available to any nonmember as a result of ownership of shares solely as coowner of shares with a member, and any certificate or other evidence of shares which may be issued, shall contain the words "No transfer of voting rights or other membership privilege is permitted by virtue of transfer of shares." Shares may be transferred to a public agency lawfully entitled to receive the shares when designated by a member as assignee of an account pledged as a surety deposit to the public agency by the member.

(b) A credit union that has a low-income designation pursuant to Section 701.34 of the regulations of the National Credit Union Administration (12 C.F.R. Sec. 701.34) may issue shares to nonmembers. Except with the written approval of the commissioner, the total number of shares issued by the credit union to nonmembers pursuant to this subdivision shall not exceed 20 percent of the unimpaired capital and surplus of the credit union.

SEC. 33. Section 14858 of the Financial Code is amended to read:

14858. Every credit union shall apply for and obtain insurance as provided for by Title II of the Federal Credit Union Act (12 U.S.C. Sec. 1781 and following), or other insurance or guaranty of shares that is not unsatisfactory to the commissioner. In seeking and retaining this insurance or guaranty, a credit union may do all things and assume and discharge all obligations required of it when not in conflict with the laws of this state.

SEC. 34. Section 14859 of the Financial Code is repealed.

SEC. 34.3. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 2 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division I (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive



reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401, 408, 408A, 457, or 530 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union as trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over the trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary that show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

SEC. 34.5. Section 14862 of the Financial Code is amended to read:

14862. The board of directors shall establish from time to time a written savings capital structure policy which shall set out the various terms and conditions upon which credit union shares may be issued, paid for, transferred, and withdrawn. The savings capital structure policy may provide for different rates, maturities and minimum share account balances, subject to the rules of the commissioner for the credit union's savings capital and the terms and conditions on which dividends may be calculated and paid to member's purchasing credit



union shares. The savings capital structure policy shall have as its goal avoiding instability in the credit union's savings capital and thereby providing that credit union members have an adequate source of funds for loans and receive a fair return on member savings capital.

SEC. 34.7. Section 14901 of the Financial Code is amended to read:

14901. The rates of dividends and terms of payment may be established in advance by action of the board of directors. However, nothing in this section shall be construed to permit any credit union to pay a dividend except as provided in Section 14902.

SEC. 35. Section 14903 of the Financial Code is repealed.

SEC. 35.3. Section 14904 of the Financial Code is repealed.

SEC. 35.7. Section 14950 of the Financial Code is amended to read:

14950. (a) Every credit union may enter into obligations with its members upon the approval of the credit committee or, in the alternative, the credit manager, subject to the terms and conditions established by the board of directors pursuant to Section 15100.

(b) (1) The board of directors of a credit union shall adopt a policy governing the acceptance by the credit union of notes receivable from nonmembers as consideration for the sale of assets owned by the credit union through bona fide transactions.

(2) No credit union may accept notes receivable from nonmembers as consideration for the sale of assets owned by the credit union except in accordance with a policy adopted by the board of directors pursuant to paragraph (1).

(3) Transactions subject to this subdivision shall not be deemed to be loans to nonmembers for purposes of Section 14750.

SEC. 36. Section 14951 of the Financial Code is amended to read:

14951. Any application for any loan or extension or guarantee of credit, except an application for an extension of a loan, shall be in writing, shall state the purpose for which the loan or extension or guarantee of credit is desired, and, if applicable, shall describe the property that is proposed to secure the loan or extension or guarantee of credit.

SEC. 36.5. Section 14952 of the Financial Code is amended to read:

14952. (a) The board of directors of a credit union shall establish the maximum amount that the credit union may lend to a member under 18 years of age in any case other than a case (1) where the member is an emancipated minor or (2) where the loan is secured in the manner provided for in Section 14955.

(b) No credit union shall make a loan to a member under 18 years of age that will result in the member being obligated to the credit union in excess of the maximum amount established by the board of directors pursuant to subdivision (a) unless the member is an



emancipated minor or the loan is secured in the manner provided for in Section 14955.

SEC. 37. Section 14959 of the Financial Code is amended to read:

14959. (a) A credit union may participate in loans made to its members jointly with other credit unions, corporations or financial organizations.

(b) A credit union may participate in a loan originated by another credit union which is made to a member of the originating credit union even though the member is not also a member of the credit union participating in the loan. A loan participation that is authorized by this subdivision shall not be deemed to be an obligation or a participation in an obligation with a nonmember within the meaning of Section 14750.

SEC. 38. Section 15000 of the Financial Code is repealed.

SEC. 39. Section 15001 of the Financial Code is amended to read:

15001. Every credit union may assess charges as approved by the board of directors for failure to meet punctually obligations to the credit union. Any late charge shall be made only once for each delinquent payment and shall be subject to Section 2954.5 of the Civil Code, Division 1.1 (commencing with Section 4000) of this code, and any other applicable law.

SEC. 40. Section 15050 of the Financial Code is amended to read:

15050. (a) For purposes of this section, “official” means a director, officer, or member of the supervisory committee or the credit committee of a credit union.

(b) No credit union shall enter into any obligation with any official, directly or indirectly, unless the obligation complies with all lawful requirements of this division with respect to obligations permitted for other members of the credit union and is not on terms more favorable than those extended to other members of the credit union, and the obligation is entered into in accordance with a written policy adopted by the directors establishing that all officials shall have an equal opportunity to enter into obligations with the credit union.

(c) No credit union shall enter into any obligation with any official, directly or indirectly, not fully secured by shares or certificates for funds unless all of the following requirements are satisfied:

(1) Upon the making of the obligation, the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee will not exceed 10 percent of the aggregate dollar amount of all savings capital of the credit union, except that in credit unions whose aggregate savings capital is five million dollars (\$5,000,000) or more but less than ten million dollars (\$10,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 15 percent of the aggregate dollar amount of all savings capital of the credit union, and in credit unions whose aggregate



savings capital is less than five million dollars (\$5,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 20 percent of the aggregate dollar amount of all savings capital of the credit union.

(2) The obligation, except any portion of an obligation fully secured by shares, does not exceed 1 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, except that in credit unions whose aggregate savings capital is five million dollars (\$5,000,000) or more but less than ten million dollars (\$10,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 3 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, and in credit unions whose aggregate savings capital is less than five million dollars (\$5,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 5 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less.

(3) (A) The obligation is approved by the credit committee, or in the alternative the credit manager, and by the board of directors, except that the credit manager shall not take part in any credit decision directly or indirectly for his or her benefit. The board of directors may select a loan officer to prepare a report and recommendation as to any extension of credit or other obligation requested by the credit manager.

(B) Subparagraph (A) does not apply to the creation of an obligation on which an official is a direct obligor or an endorser, cosigner, or guarantor, if the aggregate of all of the following does not exceed fifty thousand dollars (\$50,000) plus the amount of shares, if any, that are pledged or will be pledged as collateral by the official:

(i) The amount of the proposed obligation.

(ii) The outstanding balances of obligations, including the used portion of any approved line of credit, extended to, or endorsed, cosigned, or guaranteed by, the official.

(iii) The total unused portion of approved lines of credit extended to, or endorsed, cosigned, or guaranteed by, the official.

(4) The credit union member entering into the obligation takes no part in the consideration of his or her application and does not attend any committee or board meeting while his or her application is under consideration.

(5) The names of members of the credit committee, or in the alternative, the credit manager, and board of directors who voted to



authorize or ratify the obligation shall be entered in their respective minutes.

(d) No credit union shall permit an official or the credit manager to become surety for any obligation created by the credit union for anyone other than a member of their immediate family.

(e) No credit union shall enter into any obligation with any credit manager or any officer employed by the credit union, directly or indirectly, unless the obligation is in compliance with all requirements of this division with respect to obligations permitted for other members, and not on terms more favorable than those extended to other employees, and approved by the board of directors.

SEC. 40.5. Section 15100 of the Financial Code is amended to read:

15100. (a) The board of directors shall establish written policies which shall set forth the policies of the credit union with respect to any obligation that is offered to the members of the credit union. The written policies shall set forth the maximum amounts and terms for any obligation offered to the members, including, but not limited to, the following information:

(1) For loans, the written policies shall set out the terms for unsecured loans, the maximum amount and terms for secured loans, the schedule of interest rates established pursuant to Section 15000 for each type or class of unsecured and secured loan offered to members, the maximum maturity for any loan, or, in the case of an open-end loan, the rate of repayment for any type or class of open-end loan, the limitations, if any, which shall be placed on the authority of any loan officer appointed pursuant to Sections 14602 and 14603, and, subject to the provisions of subdivisions (b) and (c), the individual limits on obligations that are applicable to all members of the credit union. Any policy developed pursuant to this section by the board of directors shall, insofar as possible, and, subject to individual creditworthiness, ensure equal access to funds available for obligations with credit union members.

(2) For obligations other than those set out in paragraph (1), the board of directors shall set out the interest rates and essential terms of the obligations offered to the members and any other information as may be required pursuant to regulations that may be adopted by the commissioner.

(b) Notwithstanding subdivision (a), no credit union policy shall permit a credit union to enter into obligations with an individual credit union member whereby the total obligations of that member, exclusive of amounts secured by shares or certificates for funds, exceed 10 percent of the aggregate dollar amount of the credit union's savings capital.

(c) Notwithstanding subdivision (b), no credit union policy shall permit a credit union to enter into obligations with any one family



whereby the total obligations of the family would be greater than the amount permitted by subdivision (b). For purposes of this article, “family” means the marital couple or any head of household together with those dependents residing with the marital couple or the head of household and those dependents attending school away from the principal residence of the marital couple or head of household.

(d) Notwithstanding subdivisions (a), (b) and (c), any obligation with a member which is not a natural person shall not result in liability to the credit union in excess of that member’s investment in the credit union unless an exception is authorized in the credit union’s bylaws and approved by the commissioner. Any lending activity permitted pursuant to this subdivision may be terminated by an order issued by the commissioner pursuant to Sections 14200 and 14204.

SEC. 41. Section 15201 of the Financial Code is amended to read:

15201. (a) The merger shall be made pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of at least a majority of the members of the disappearing credit union, in person or by proxy, at a meeting of the members called for that purpose or by written consent of a majority of the members of the disappearing credit union. Notice of the meeting shall be given to the members, either personally or by first-class mail, not less than 30 nor more than 90 days prior to the date of the meeting.

(b) The commissioner may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union, as set forth in subdivision (a), if the plan of merger is approved by less than a majority of the membership as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the merger or the ballot for written vote on the merger was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the merger might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the merger.

(c) Notwithstanding subdivisions (a) and (b), the commissioner may approve a merger without a vote of the membership of the disappearing credit union if a majority of the members of the board of directors of the surviving credit union approves the merger, the disappearing credit union is in danger of insolvency and the merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner. For purposes of this chapter, a credit union is insolvent when, from the most recent available financial statements, it can be shown that the total amount



of its shares exceeds the present cash value of its assets after providing for liabilities unless the commissioner finds all of the following:

(1) The facts that caused the deficient share-asset ratio no longer exist.

(2) Further decline in the share-asset ratio is not probable.

(3) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable.

(4) The probability of a further potential loss is negligible to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner.

SEC. 41.3. Section 15202 of the Financial Code is amended to read:

15202. (a) After the requirement of approval as provided in Section 15201 is satisfied, each credit union shall execute a certificate of merger as an officers' certificate pursuant to Section 5062 of the Corporations Code that shall set forth:

(1) That the plan of merger has been approved by the board of directors.

(2) That the plan of merger has been duly approved by any required vote of the members pursuant to Section 15201.

(3) The total number of members of the credit union.

(b) A copy of the plan of merger and of the written approval thereof by the commissioner shall be annexed to the certificate of merger.

(c) Nothing in this section requires a federal credit union to execute or file the certificate of merger called for in subdivision (a).

SEC. 42. Section 15203 of the Financial Code is amended to read:

15203. Each certificate of merger called for in Section 15202 shall be filed in the office of the Secretary of State. After the filing in the office of the Secretary of State, a copy of each certificate of merger, certified by the Secretary of State, shall be filed with the commissioner, and at that time the merger shall become effective for all purposes.

SEC. 43. Section 15250 of the Financial Code is amended to read:

15250. (a) Whenever the board of directors of a credit union recommends by a vote of a majority of all its members the dissolution of the credit union, the members of the credit union, at any meeting specially called to consider the subject, may elect to dissolve the credit union, by the vote or written consent of a majority of all members of the credit union.

(b) The commissioner may approve the dissolution of a credit union which is recommended by the vote of a majority of the board members of the credit union, even if the dissolution is approved by less than a majority of all members of the credit union, if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the dissolution or the written ballot for written vote on the



dissolution was mailed to each member entitled to vote upon the question, (2) the notice or the written ballot disclosed the purpose of the meeting or the written vote and informed the membership that approval of the dissolution might be sought pursuant to this section, and (3) a majority of the votes cast upon the question were in favor of the dissolution.

(c) Whenever the members of the board of directors vote to recommend the dissolution of any credit union, the credit union shall not make any loans, withdrawal of shares, or withdrawal of certificates for funds until the members approve or disapprove the recommendation of the board of directors.

SEC. 44. Section 15251 of the Financial Code is amended to read:

15251. If the dissolution of the credit union is approved pursuant to subdivision (a) or (b) of Section 15250, the board of directors of the credit union shall elect a committee of three members or may by resolution appoint a liquidating agent to liquidate the assets of the credit union. If the commissioner is appointed liquidating agent, the commissioner may act as liquidating agent or appoint the National Credit Union Administration or other person to act as liquidating agent. Whenever the commissioner is appointed liquidating agent, the credit union shall surrender its certificate to act as a credit union.

SEC. 45. Section 15307 of the Financial Code is repealed.

SEC. 46. Chapter 11 (commencing with Section 16100) of Division 5 of the Financial Code is repealed.

SEC. 47. Sections 9, 11, 13, 15, and 16 of this act shall become operative on July 1, 1999.

