

4567--A

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sens. GRIFFO, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the insurance law, in relation to credit union memberships and general powers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 3 and 5 of section 450-a of the banking law,
2 as added by chapter 214 of the laws of 1999, subdivision 5 as further
3 amended by section 104 of part A of chapter 62 of the laws of 2011, are
4 amended to read as follows:
5 3. Notwithstanding any other provision of this article, a low income
6 credit union may issue shares, share drafts and share certificates to
7 nonmembers who or which may be natural persons, corporations, partner-
8 ships or other legal entities. A BRANCH OF A LOW INCOME CREDIT UNION
9 LOCATED IN A LOW INCOME AREA SHALL BE EXEMPT FROM TAXATION UNDER SECTION
10 FOUR HUNDRED EIGHTY-FIVE-F OF THE REAL PROPERTY TAX LAW.
11 5. As used in this section, the term "low income credit union" shall
12 mean a credit union in which a majority of [the members] A WELL-DEFINED
13 SEGMENT OF MEMBERS TO BE SERVED: (a) make less than eighty percent of
14 the average for all wage earners as established by the bureau of labor
15 statistics of the United States department of labor or have annual
16 household incomes that fall at or below eighty percent of the median
17 household income for the nation as established by the United States
18 census bureau; or (b) are residents of a public housing project who
19 qualify for such residency because of low income; or (c) qualify to
20 receive benefits from any program designed to assist the economically
21 disadvantaged. The superintendent of financial services may promulgate

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 regulations appropriate to the formation and operation of low income
2 credit unions.

3 S 2. Subdivision 2 of section 451 of the banking law, as amended by
4 chapter 660 of the laws of 2004, is amended to read as follows:

5 2. The qualifications for membership.

6 [(a) Membership shall be limited to:

7 (1) persons having a common employer;

8 (2) persons and organizations who are members of the same trade,
9 industry, profession, club, union, society or other association;

10 (3) in the case of a credit union incorporated under this chapter as
11 of the effective date of this subdivision, and with the approval of the
12 superintendent, which approval shall not be given if it would be
13 destructive of competition within a municipality, more than one common
14 employer; provided, however, that an employer group with under three
15 thousand employees may be added upon receipt of a notice as provided in
16 subdivision two of section four hundred seventy-eight of this article;

17 (4) with the approval of the superintendent, and subject to the
18 provisions of paragraph (b) of this subdivision, more than one group
19 each of which has, within the group, a common bond of occupation,
20 including a common employer, or association; provided, however, that a
21 group of less than three thousand members, which is within reasonable
22 proximity to the credit union's service area or areas, may be added upon
23 receipt of a notice as provided in subdivision two of section four
24 hundred seventy-eight of this article; or

25 (5) persons and organizations within a well-defined local community,
26 neighborhood or rural district and who in the judgment of the super-
27 intendent have such a community of interest as will insure proper admin-
28 istration.

29 (b) In considering an application to add a group to a credit union
30 authorized under subparagraph four of paragraph (a) of this subdivision,
31 the superintendent shall not approve the addition unless the group is
32 within reasonable proximity to the credit union's service area or areas.
33 If the group has more than three thousand members, the superintendent
34 shall not approve such addition unless he or she determines that the
35 group could not feasibly or reasonably establish a new single common
36 bond credit union because:

37 (1) the group lacks sufficient volunteer and other resources to
38 support the efficient and effective operation of a credit union;

39 (2) the group does not meet the criteria which the superintendent has
40 determined to be important for the likelihood of success in establishing
41 and managing a new credit union, including demographic characteristics
42 such as geographical location of members, diversity of ages and income
43 levels, and other factors that may affect the financial viability and
44 stability of a credit union;

45 (3) the group would be unlikely to operate a safe and sound credit
46 union; or

47 (4) the group has been transferred from another credit union in
48 connection with a merger or consolidation recommended by a state or
49 federal regulator based on safety and soundness concerns or by the board
50 of the National Credit Union Administration in its capacity as conserva-
51 tor or liquidating agent.

52 (c) With the approval of the superintendent, a credit union may extend
53 membership to persons and organizations in an underserved local communi-
54 ty, neighborhood or rural district, where such area is determined by the
55 superintendent to be an "investment area" as defined in the federal
56 Community Development Banking and Financial Institutions Act of 1994 (12

U.S.C. 4703(16)) and any other requirements imposed by the superintendent, including a requirement that the credit union establish and maintain an office or facility in such area.

(d) To the extent not expressly prohibited by the bylaws of the credit union:

(1) in each instance where a person is a member or is directly eligible for membership, members of his or her immediate family or household shall be eligible for membership. For the purposes of this subparagraph, "immediate family" means a person's spouse, and their lineal ancestors and descendants, including persons so related by adoption, siblings, stepparents, stepchildren, and stepsiblings; and "household" means persons living in the same residence and maintaining a single economic unit;

(2) any employee of the credit union shall be eligible to membership; and

(3) any member who leaves the field of membership and who has not withdrawn or been expelled may retain membership.

(e) To the extent not expressly prohibited by the bylaws of the credit union, any incorporated or unincorporated organization composed principally of persons eligible to membership in the credit union and the organization's employees shall be eligible to membership in the credit union.

(f) Any person who is eligible for membership by reason of the fact that he or she is an employee either of a common employer or of a credit union shall not become ineligible, after the termination of such employment, as long as he or she receives a pension or annuity from, or under, a plan or other arrangement established by such common employer or credit union.

(g) The provisions of this subdivision shall not apply to a corporate credit union.] QUALIFICATIONS FOR MEMBERSHIP SHALL BE PURSUANT TO SECTION FOUR HUNDRED FIFTY-ONE-A OF THIS ARTICLE AND SHALL NOT APPLY TO A CORPORATE CREDIT UNION.

S 3. The banking law is amended by adding a new section 451-a to read as follows:

S 451-A. QUALIFICATIONS FOR MEMBERSHIP. 1. THE MEMBERSHIP OF A CREDIT UNION SHALL BE DETERMINED BY THE BOARD OF DIRECTORS OF SUCH CREDIT UNION AND SHALL CONSIST OF PERSONS WITHIN THE CREDIT UNION'S FIELD OF MEMBERSHIP WHO HAVE BEEN DULY ADMITTED MEMBERS.

2. A CREDIT UNION'S FIELD OF MEMBERSHIP MAY INCLUDE:

(A) PERSONS WITHIN ONE OR MORE GROUPS OF THE FOLLOWING, OR A COMBINATION OF SUCH GROUPS:

(1) OCCUPATION, OR

(2) ASSOCIATION OR INTEREST, OR

(3) PERSONS WHO RESIDE, WORK, WORSHIP OR ATTEND SCHOOL WITHIN A GEOGRAPHIC AREA, IDENTIFIABLE NEIGHBORHOOD, COMMUNITY OR RURAL DISTRICT; AND

(B) BUSINESSES, ASSOCIATIONS OR ORGANIZATIONS LOCATED WITHIN A GEOGRAPHIC AREA; AND

(C) FAMILY MEMBERS OF SUCH PERSONS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS PARAGRAPH, "FAMILY MEMBER" MEANS A PERSON RELATED BY BLOOD, MARRIAGE OR LIVING IN THE SAME HOUSEHOLD WITH A PERSON WITHIN THE FIELD OF MEMBERSHIP AND THEIR LINEAL ANCESTORS AND DESCENDANTS INCLUDING PERSONS SO RELATED BY ADOPTION, SIBLINGS, STEPPARENTS, STEPCHILDREN AND STEPSIBLINGS; AND "HOUSEHOLD" MEANS PERSONS LIVING IN THE SAME RESIDENCE AND MAINTAINING A SINGLE ECONOMIC UNIT; AND

(D) ANY EMPLOYEE OF THE CREDIT UNION; AND

(E) ANY MEMBER WHO LEAVES THE FIELD OF MEMBERSHIP AND WHO HAS NOT WITHDRAWN OR BEEN EXPELLED MAY RETAIN MEMBERSHIP; AND

(F) ANY INCORPORATED OR UNINCORPORATED ORGANIZATION COMPOSED PRINCIPALLY OF PERSONS ELIGIBLE TO MEMBERSHIP IN THE CREDIT UNION AND THAT ORGANIZATION'S EMPLOYEES.

3. ANY PERSON WHO IS ELIGIBLE FOR MEMBERSHIP BY REASON OF THE FACT THAT HE OR SHE IS AN EMPLOYEE OF A COMMON EMPLOYER OR OF A CREDIT UNION SHALL NOT BECOME INELIGIBLE, AFTER THE TERMINATION OF SUCH EMPLOYMENT, AS LONG AS HE OR SHE RECEIVES A PENSION OR ANNUITY FROM, OR UNDER, A PLAN OR OTHER ARRANGEMENT ESTABLISHED BY SUCH COMMON EMPLOYER OR CREDIT UNION.

4. A CREDIT UNION MAY EXTEND MEMBERSHIP TO PERSONS AND ORGANIZATIONS IN AN UNDERSERVED LOCAL COMMUNITY, NEIGHBORHOOD OR RURAL DISTRICT WHERE SUCH AREA IS CONSIDERED AN "INVESTMENT AREA" AS DEFINED IN THE FEDERAL COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT OF 1994 (12 U.S.C. 4703(16)).

S 4. Subparagraph (i) of paragraph (c) of subdivision 6 of section 454 of the banking law, as added by chapter 660 of the laws of 2004, is amended to read as follows:

(i) [No credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. 1790d(c)(1)(A) for a credit union to be well capitalized.] NO CREDIT UNION SHALL MAKE ANY MEMBER BUSINESS LOAN THAT WOULD RESULT IN A TOTAL AMOUNT OF SUCH LOANS OUTSTANDING AT THE CREDIT UNION AT ANY ONE TIME EQUAL TO MORE THAN THE GREATER OF TWENTY-FIVE PERCENT OF THE TOTAL ASSETS OF THE CREDIT UNION, OR THE LIMIT ESTABLISHED FOR FEDERAL CREDIT UNIONS.

S 5. Subparagraph (i) of paragraph (a) of subdivision 18 of section 454 of the banking law, as amended by chapter 679 of the laws of 2003, is amended to read as follows:

(i) Those securities authorized as permissible investments for savings banks by subdivisions one, two, three, four, SIX, SUBPARAGRAPH FIVE OF PARAGRAPH (A) OF SUBDIVISION NINE, twelve, [paragraph] PARAGRAPHS (a) AND (B) of subdivision twelve-a, [and] subdivisions fifteen, seventeen, PARAGRAPH (A) OF SUBDIVISION TWENTY, SUBPARAGRAPHS ONE AND ONE-A OF PARAGRAPH (A) OF SUBDIVISION TWENTY-ONE, AND SUBDIVISIONS TWENTY-FOUR-D, twenty-seven [and], TWENTY-EIGHT, twenty-eight-a, TWENTY-NINE AND THIRTY of section two hundred thirty-five of this chapter.

S 6. Subdivision 18 of section 454 of the banking law is amended by adding a new paragraph (d) to read as follows:

(D) ALL INVESTMENT ACTIVITIES AND INVESTMENTS AUTHORIZED FOR FEDERAL CREDIT UNIONS UNDER 12 CFR PART 703.13 AND 703.14.

S 7. Subdivision 21 of section 454 of the banking law, as amended by chapter 679 of the laws of 2003, is amended to read as follows:

21. To purchase, hold, lease and convey a plot whereon there is or may be erected a building suitable for the transaction of its business, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are or are to be provided, with or without charge, primarily for its members or employees or both; provided that the net aggregate of all investments of any credit union in such plots and building shall be limited to [six] FORTY per centum of the capital and retained earnings of such credit union, except with the approval of the superintendent.

1 S 8. Subdivision 2 of section 461 of the banking law, as added by
2 chapter 608 of the laws of 1996, is amended to read as follows:

3 2. Subject to such regulations as the superintendent may adopt, any
4 credit union, may open and maintain within or without the state, in any
5 locality in which [a substantial portion of] its actual potential
6 membership is employed, ATTENDING SCHOOL or residing, one or more
7 stations for the conduct of its business [provided that before any such
8 station or stations shall be opened or maintained or removed to a new
9 location:

10 (a) Its board of directors shall submit to the superintendent a writ-
11 ten application setting forth the reasons therefor and the proposed
12 location of such station or stations.

13 (b) The superintendent shall have given his written approval thereto].

14 S 9. Subdivision 1 of section 454 of the banking law, as amended by
15 chapter 679 of the laws of 2003, is amended to read as follows:

16 1. To issue and receive payments on, shares, share drafts, and share
17 certificates, subject to such terms, rates, and conditions as are estab-
18 lished by its board of directors, from:

19 (A) its members;

20 (B) AN OFFICER, EMPLOYEE OR AGENT OF THOSE NONMEMBER UNITS OF THE
21 FEDERAL, STATE, INDIAN TRIBAL OR LOCAL GOVERNMENTS AND POLITICAL SUBDI-
22 VISIONS; and

23 (C) from other credit unions, both state and federally chartered.

24 A member may designate any person or persons to own shares or share
25 certificates with him or her in joint tenancy with the right of survi-
26 vorship, but no joint tenant shall be permitted to vote, obtain loans,
27 or hold office, unless he or she is within the field of membership and
28 is a qualified member.

29 S 10. Section 454 of the banking law is amended by adding two new
30 subdivisions 37 and 38 to read as follows:

31 37. TO EXERCISE INCIDENTAL POWERS APPROVED BY THE NATIONAL CREDIT
32 UNION ADMINISTRATION AS SET FORTH IN 12 C.F.R. 721.

33 38. TO RECEIVE SUPPLEMENTAL CAPITAL FROM BOTH NATURAL AND NON-NATURAL
34 PERSON NON-MEMBERS. THE OFFER AND SALE OF SUPPLEMENTAL CAPITAL SHALL BE
35 SUBJECT TO REGULATIONS PROMULGATED BY THE SUPERINTENDENT THAT SHALL
36 ADDRESS THE SAFETY AND SOUNDNESS OF THE OFFER OR SALE OF SUCH SUPPLE-
37 MENTAL CAPITAL, INCLUDING THE SUPPLEMENTAL CAPITAL'S MATURITY, TERM OF
38 SALE, TERMS OF CAPITAL, TOTAL AMOUNT OF SUPPLEMENTAL CAPITAL THAT MAY BE
39 OUTSTANDING AT ONE TIME, REDEMPTION, ELIGIBILITY OF THE INVESTORS. IN
40 ADDITION, SUPPLEMENTAL CAPITAL SHALL BE SUBJECT TO ALL OF THE FOLLOWING:

41 (I) THE SUPPLEMENTAL CAPITAL SHALL BE ESTABLISHED AS AN UNINSURED
42 SUPPLEMENTAL CAPITAL OR OTHER FORM OF NON-SHARE ACCOUNT.

43 (II) THE SUPPLEMENTAL CAPITAL MAY NOT BE INSURED BY THE NATIONAL CRED-
44 IT UNION SHARE INSURANCE FUND (NCUSIF) OR ANY OTHER GOVERNMENTAL OR
45 PRIVATE ENTITY.

46 (III) THE SUPPLEMENTAL CAPITAL HOLDER'S CLAIM AGAINST THE CREDIT UNION
47 SHALL BE SUBORDINATE TO ALL OTHER CLAIMS INCLUDING THOSE OF SHAREHOLD-
48 ER'S CREDITORS, AND THE NCUSIF, OR AN APPROVED INSURER.

49 (IV) THE SUPPLEMENTAL CAPITAL MAY NOT BE PLEDGED OR PROVIDED BY THE
50 ACCOUNT HOLDER AS A SECURITY ON A LOAN OR OTHER OBLIGATION WITH THE
51 CREDIT UNION OR ANY OTHER PARTY.

52 FOR PURPOSES OF THIS SECTION, SUPPLEMENTAL CAPITAL SHALL MEAN FORMS OF
53 CAPITAL THAT ARE SUBORDINATE TO SHARES, OTHER LIABILITIES AND SHARE
54 INSURANCE.

55 S 11. Section 479 of the banking law, as added by chapter 608 of the
56 laws of 1996, is amended to read as follows:

1 S 479. Credit union not liable for taxation. Any credit union subject
2 to the provisions of this article shall be deemed an institution for
3 savings within the meaning of the law which exempts such institutions
4 from taxation. No law which taxes corporations in any form, or the
5 shares thereof or the accumulations therein, OR THEIR PROPERTY, THEIR
6 FRANCHISES, CAPITAL, RESERVES, SURPLUSES, AND OTHER FUNDS, OR THEIR
7 INCOME, shall apply to corporations doing business in accordance with
8 the provisions of this article, unless such corporations are specif-
9 ically named in said law, EXCEPT THAT ANY REAL AND TANGIBLE PERSONAL
10 PROPERTY OF SUCH CORPORATION SHALL BE SUBJECT TO TAXATION TO THE SAME
11 EXTENT AS OTHER SIMILAR PROPERTY IS TAXED.

12 S 12. Subparagraph (iii) of paragraph 3 of subsection (b) of section
13 1101 of the insurance law, as amended by chapter 140 of the laws of
14 1995, is amended to read as follows:

15 (iii) in the event the lessor, creditor or assignee purchases lessor
16 or creditor gap insurance, the charge to the lessee or debtor for the
17 waiver does not exceed the cost of the lessor or creditor gap insurance
18 coverage; provided, however, that nothing contained herein shall be
19 construed to prohibit the lessor from including the charge for the waiv-
20 er in the capitalized cost as that term is defined in subdivision eleven
21 of section three hundred thirty-one of the personal property law AND
22 PROVIDED FURTHER THAT THIS SUBPARAGRAPH SHALL NOT APPLY TO A CREDIT
23 UNION LESSOR, CREDITOR OR ASSIGNEE.

24 S 13. This act shall take effect immediately.