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**ENGROSSED HOUSE BILL 1165**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Ryu, Vick, Santos, Hoff, and Harris-Talley

Read first time 01/12/21. Referred to Committee on Consumer Protection & Business.

1 AN ACT Relating to the Washington credit union act; and amending  
2 RCW 31.12.005, 31.12.402, 31.12.404, 31.12.436, and 31.12.438.

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

4 **Sec. 1.** RCW 31.12.005 and 2017 c 61 s 1 are each amended to read  
5 as follows:

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

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

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

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

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

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

17 (c) Deposits and withdrawals may be made at the facility.

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

- 1 (5) "Credit union" means a credit union organized and operating  
2 under this chapter.
- 3 (6) "Credit union service organization" means an organization  
4 that a credit union has invested in pursuant to RCW 31.12.436(1)(h),  
5 or a credit union service organization invested in by an out-of-  
6 state, federal, or foreign credit union.
- 7 (7) "Department" means the department of financial institutions.
- 8 (8) "Director" means the director of financial institutions.
- 9 (9) "Federal credit union" means a credit union organized and  
10 operating under the laws of the United States.
- 11 (10) "Financial institution" means any commercial bank, trust  
12 company, savings bank, or savings and loan association, whether state  
13 or federally chartered, and any credit union, out-of-state credit  
14 union, or federal credit union.
- 15 (11) "Foreign credit union" means a credit union organized and  
16 operating under the laws of another country or other foreign  
17 jurisdiction.
- 18 (12) "Insolvency" means:
- 19 (a) If, under United States generally accepted accounting  
20 principles, the recorded value of the credit union's assets are less  
21 than its obligations to its share account holders, depositors,  
22 creditors, and others; or
- 23 (b) If it is likely that the credit union will be unable to pay  
24 its obligations or meet its share account holders' and depositors'  
25 demands in the normal course of business.
- 26 (13) "Loan" means any loan, overdraft line of credit, extension  
27 of credit, or lease, in whole or in part.
- 28 (14) "Low-income member" means a member whose family income is  
29 not more than eighty percent of the median family income for the  
30 metropolitan statistical area where the member lives or for the  
31 national metropolitan area where the member lives, whichever is  
32 greater, or a member or potential member who earns not more than  
33 eighty percent of the total median earnings for individuals for the  
34 metropolitan statistical area where the member lives or for the  
35 national metropolitan area where the member lives, whichever is  
36 greater. For members living outside of a metropolitan statistical  
37 area, the department must apply the statewide or national  
38 nonmetropolitan area median family income or total median earnings  
39 for individuals.
- 40 (15) "Material violation of law" means:

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

3 (i) Law;

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

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

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

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

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

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

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

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

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

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

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

31 (22) "Senior operating officer" includes:

32 (a) An operating officer who is a vice president or above; and  
33 (b) Any employee who has policy-making authority.

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

36 (24) "Small credit union" means a credit union with up to ten  
37 million dollars in total assets for the purposes of RCW 31.12.569.  
38 In any rule providing relief for small credit unions in RCW  
39 31.12.516, the director shall determine an appropriate definition for

1 the term based on the subject matter of the rule and shall include  
2 such definition in such rule.

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

4 (a) If the credit union is insolvent;

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

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

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

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

15 **Sec. 2.** RCW 31.12.402 and 2011 c 303 s 6 are each amended to  
16 read as follows:

17 A credit union may:

18 (1) Issue shares to and receive deposits from its members in  
19 accordance with RCW 31.12.416;

20 (2) Make loans to its members in accordance with RCW 31.12.426  
21 and 31.12.428;

22 (3) Pay dividends and interest to its members in accordance with  
23 RCW 31.12.418;

24 (4) Impose reasonable charges for the services it provides (~~to~~  
25 ~~its members~~));

26 (5) Impose financing charges and reasonable late charges in the  
27 event of default on loans, subject to applicable law, and recover  
28 reasonable costs and expenses, including, but not limited to,  
29 collection costs, and reasonable attorneys' fees incurred both before  
30 and after judgment, incurred in the collection of sums due, if  
31 provided for in the note or agreement signed by the borrower;

32 (6) Acquire, lease, hold, assign, pledge, sell, or otherwise  
33 dispose of interests in personal property and in real property in  
34 accordance with RCW 31.12.438;

35 (7) Deposit and invest funds in accordance with RCW 31.12.436;

36 (8) Borrow money, up to a maximum of fifty percent of its total  
37 shares, deposits, and net worth;

38 (9) Discount or sell any of its assets, or purchase any or all of  
39 the assets of another credit union, out-of-state credit union, or

1 federal credit union. However, a credit union may not discount or  
2 sell all, or substantially all, of its assets without the approval of  
3 the director;

4 (10) Accept deposits of deferred compensation of its members;

5 (11) Act as fiscal agent for and receive payments on shares and  
6 deposits from the federal government or this state, and any agency or  
7 political subdivision thereof;

8 (12) Engage in activities and programs as requested by the  
9 federal government, this state, and any agency or political  
10 subdivision thereof, when the activities or programs are not  
11 inconsistent with this chapter;

12 (13) Hold membership in credit unions, out-of-state credit  
13 unions, or federal credit unions and in organizations controlled by  
14 or fostering the interests of credit unions, including, but not  
15 limited to, a central liquidity facility organized under state or  
16 federal law;

17 (14) Pay additional dividends and interest to members, or an  
18 interest rate refund to borrowers;

19 (15) Enter into lease agreements, lease contracts, and  
20 lease-purchase agreements with members;

21 (16) Act as insurance agent or broker for the sale to members of:

22 (a) Group life, accident, health, and credit life and disability  
23 insurance; and

24 (b) Other insurance that other types of Washington state-  
25 chartered financial institutions are permitted to sell, on the same  
26 terms and conditions that these institutions are permitted to sell  
27 such insurance;

28 (17) Impose a reasonable service charge for the administration  
29 and processing of accounts that remain dormant for a period of time  
30 specified by the credit union;

31 (18) Establish and operate on-premises or off-premises electronic  
32 facilities;

33 (19) Enter into formal or informal agreements with another credit  
34 union for the purpose of fostering the development of the other  
35 credit union;

36 (20) Work with community leaders to develop and prioritize  
37 efforts to improve the areas where their members reside by making  
38 investments in the community through contributions to organizations  
39 that primarily serve either a charitable, social, welfare, or

1 educational purpose, or are exempt from taxation pursuant to section  
2 501(c)(3) of the internal revenue code;

3 (21) Limit the personal liability of its directors in accordance  
4 with provisions of its articles of incorporation that conform with  
5 RCW 23B.08.320;

6 (22) Indemnify its directors, supervisory committee members,  
7 officers, employees, and others in accordance with provisions of its  
8 articles of incorporation or bylaws that conform with RCW 23B.08.500  
9 through 23B.08.600;

10 (23) Conduct a promotional contest of chance as authorized in RCW  
11 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and  
12 (~~30.22.260~~) 30A.22.260 are complied with to the satisfaction of the  
13 director; (~~and~~)

14 (24) Cash checks, money orders, and other payment instruments for  
15 members and persons who are eligible for membership in the credit  
16 union; and

17 (25) Exercise such incidental powers as are necessary or  
18 convenient to enable it to conduct the business of a credit union.

19 **Sec. 3.** RCW 31.12.404 and 2019 c 19 s 5 are each amended to read  
20 as follows:

21 (1) Notwithstanding any other provision of law, and in addition  
22 to all powers and authorities, express or implied, that a credit  
23 union has under the laws of this state, a credit union has the powers  
24 and authorities that a federal credit union had on December 31, 1993,  
25 or a subsequent date (~~not later than July 28, 2019~~) by the  
26 effective date of this section.

27 (2) Notwithstanding any other provision of law, and in addition  
28 to the powers and authorities, express or implied, that a credit  
29 union has under subsection (1) of this section, a credit union has  
30 the powers and authorities that a federal credit union has subsequent  
31 to (~~July 28, 2019~~) the effective date of this section, if the  
32 director finds that the exercise of the power and authority serves  
33 the convenience and advantage of members of credit unions, and  
34 maintains the fairness of competition and parity between credit  
35 unions and federal credit unions. However, a credit union must comply  
36 with RCW 31.12.408.

37 (3) Notwithstanding any other provision of law, and in addition  
38 to the powers and authorities, express or implied, that a credit  
39 union has under subsections (1) and (2) of this section, a credit

1 union may exercise the powers and authorities that it would have if  
2 it were an out-of-state credit union. Any such power or authority is  
3 subject to regulation by the director. In exercising such power or  
4 authority, a credit union:

5 (a) Must comply with RCW 31.12.408;

6 (b) Is not granted the field of membership powers or authorities  
7 of any out-of-state credit union; and

8 (c) Must be able to exercise such power or authority consistent  
9 with the purposes of this chapter.

10 (4) Before exercising any power or authority afforded under  
11 subsection (3) of this section, a credit union must first notify the  
12 director of its intent to do so. This notice must be sent to the  
13 director by United States mail or by electronic means if the director  
14 accepts electronic delivery. If the director takes no action on the  
15 request within thirty days of delivery of the notice, the right to  
16 exercise the power or authority is deemed granted, subject to the  
17 restrictions in subsection (3)(a) and (b) of this section. In order  
18 to grant the request, the director must find that:

19 (a) The request complies with subsection (3)(a), (b), and (c) of  
20 this section; and

21 (b) The exercise of such power or authority serves the  
22 convenience and advantage of members of credit unions and maintains  
23 the fairness of competition and parity between credit unions and out-  
24 of-state credit unions.

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

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

35 **Sec. 4.** RCW 31.12.436 and 2019 c 19 s 6 are each amended to read  
36 as follows:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

14 (l) For credit unions that are approved public depositaries, any  
15 securities listed in RCW 39.58.050 as eligible collateral for public  
16 deposits;

17 (m) Investments of the type in which the state treasurer may  
18 invest state funds pursuant to RCW 43.84.080; or

19 (n) Other investments approved by the director by rule or upon  
20 written application.

21 (2) To aid in achieving its business or operational objectives, a  
22 credit union may invest in equity interests in corporations or other  
23 limited liability entities, whether or not the principal business of  
24 such other corporation or entity is related to the credit union's  
25 business. An "equity interest" is an interest such as stock in a  
26 corporation or membership in a limited liability company or a limited  
27 partnership interest in which the credit union's liability is limited  
28 to the amount of its investment and the credit union does not take on  
29 general liability.

30 (a) The entity in which the credit union invests must be engaged  
31 in or planning or developing activity that is incidental to or  
32 complementary to the credit union's operations. Activity is  
33 incidental or complementary to the credit union's operations if it  
34 would be performed for or provided to the credit union, or if it  
35 would be performed for or provided to the credit union's members in  
36 relationship to products, services, or activities that the credit  
37 union performs for or provides to its members. Such activity may not  
38 pose a risk to the safety and soundness of the credit union or the  
39 credit union industry. The entity may be engaged in other activity

1 that is not incidental to or complementary to the credit union's  
2 operations.

3 (b) A credit union may not invest in:

4 (i) A federal depository institution or state depository  
5 institution as those terms are defined in the federal deposit  
6 insurance act, 12 U.S.C. Sec. 1813; or

7 (ii) A bank holding company or savings bank holding company as  
8 those terms are defined in the federal bank holding company act, 12  
9 U.S.C. Sec. 1841.

10 (c) Until January 1, 2025, the initial aggregate amount of funds  
11 invested under this subsection (2) shall not exceed 2.5 percent of  
12 the net worth of the credit union, and when combined with the amount  
13 of funds invested in organizations described in subsection (1)(h) of  
14 this section, shall not exceed 10 percent of the assets of the credit  
15 union, whichever is less.

16 (d) Beginning January 1, 2025, the initial aggregate amount of  
17 funds invested under this subsection (2) shall not exceed five  
18 percent of the net worth of the credit union, and when combined with  
19 the amount of funds invested in organizations described in subsection  
20 (1)(h) of this section, shall not exceed 10 percent of the assets of  
21 the credit union, whichever is less.

22 (e) A credit union may engage in an activity permitted under this  
23 section only with the prior authorization of the director and subject  
24 to such requirements, restrictions, or other conditions as the  
25 director may adopt by rule, order, directive, standard, policy,  
26 memorandum, or other written communication with regard to the  
27 activity. In approving or denying a proposed activity, the director  
28 shall consider the financial and management strength of the credit  
29 union and the relationship of the activity to the credit union's  
30 operations.

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

37 **Sec. 5.** RCW 31.12.438 and 2013 c 34 s 9 are each amended to read  
38 as follows:

1 (1) A credit union may invest in real property or leasehold  
2 interests (~~(primarily for its own use or the use of a credit union~~  
3 ~~service organization in conducting business,)~~) including, but not  
4 limited to, structures and fixtures attached to real property for use  
5 in conducting its business or the business of a credit union service  
6 organization, subject to the following limitations:

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

9 (b) The board approves the investment; and

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

12 (2) (~~(If the real property or leasehold interest is acquired for~~  
13 ~~future expansion, the credit union must partially occupy the premises~~  
14 ~~within three years after the credit union makes the investment, if~~  
15 ~~the premises are improved at the time of acquisition, or within six~~  
16 ~~years after the credit union makes the investment, if the premises~~  
17 ~~are unimproved at the time of acquisition.~~

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

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