

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 710

Introduced by Dungan, 26.

Read first time January 18, 2023

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Credit Union Act; to amend sections
2 21-1701, 21-1702, 21-1705, 21-1725.01, 21-1729, 21-1737, 21-1743,
3 21-1749, 21-1767, 21-1769, 21-17,102, and 21-17,109, Reissue Revised
4 Statutes of Nebraska; to define and redefine terms; to change
5 provisions relating to establishing branches, articles of
6 association, bylaws, principal place of business, records,
7 membership, meetings, boards of directors, interest rates, credit
8 committees, authorized investments, and mergers or consolidations;
9 to provide for associate directors; to harmonize provisions; to
10 repeal the original sections; and to outright repeal section
11 21-1788, Reissue Revised Statutes of Nebraska.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-1701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 21-1701 Sections 21-1701 to 21-17,115 and sections 3 and 12 of this
4 act shall be known and may be cited as the Credit Union Act.

5 Sec. 2. Section 21-1702, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 21-1702 For purposes of the Credit Union Act, the definitions found
8 in sections 21-1703 to 21-1722 and section 3 of this act shall be used.

9 Sec. 3. Associate director shall mean an individual appointed by a
10 credit union board to the position described in section 12 of this act.

11 Sec. 4. Section 21-1705, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 21-1705 Credit union shall mean a cooperative, not-for-profit
14 ~~nonprofit~~ corporation organized under the Credit Union Act for purposes
15 of educating and encouraging its members in the concept of thrift,
16 creating a source of credit for provident and productive purposes, and
17 carrying on such collateral activities as are set forth in the act.

18 Sec. 5. Section 21-1725.01, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 21-1725.01 (1) Upon receiving an application to establish a new
21 credit union, a public hearing shall be held on each application. Notice
22 of the filing of the application shall be published by the department for
23 three weeks in a legal newspaper published in or of general circulation
24 in the county where the applicant proposes to operate the credit union.
25 The date for hearing the application shall be not less than thirty days
26 after the last publication of notice of hearing and not more than ninety
27 days after filing the application unless the applicant agrees to a later
28 date. Notice of the filing of the application shall be sent by the
29 department to all financial institutions located in the county where the
30 applicant proposes to operate.

31 (2) A credit union may establish one or more branches in this state

1 with the approval of the director.

2 (3) A credit union which has a main chartered office or approved
3 branch located in this state may, upon notification to the department,
4 establish savings account programs at any elementary or secondary school,
5 whether public or private, that has students who reside in the same city
6 or village as the main chartered office or branch of the credit union,
7 or, if the main office of the credit union is located in an
8 unincorporated area of a county, at any school that has students who
9 reside in the same unincorporated area. The savings account programs
10 shall be limited to the establishment of individual student accounts and
11 the receipt of deposits for such accounts.

12 ~~(2) When application is made to establish a branch of a credit~~
13 ~~union, the director shall hold a hearing on the matter if he or she~~
14 ~~determines, in his or her discretion, that the condition of the applicant~~
15 ~~credit union warrants a hearing. If the director determines that the~~
16 ~~condition of the credit union does not warrant a hearing, the director~~
17 ~~shall publish a notice of the filing of the application in a newspaper of~~
18 ~~general circulation in the county where the proposed branch would be~~
19 ~~located. If the director receives any substantive objection to the~~
20 ~~proposed credit union branch within fifteen days after publication of~~
21 ~~such notice, he or she shall hold a hearing on the application. Notice of~~
22 ~~a hearing held pursuant to this subsection shall be published for two~~
23 ~~consecutive weeks in a newspaper of general circulation in the county~~
24 ~~where the proposed branch would be located. The date for hearing the~~
25 ~~application shall be not less than thirty days after the last publication~~
26 ~~of notice of hearing and not more than ninety days after the filing of~~
27 ~~the application unless the applicant agrees to a later date.~~

28 ~~(3) The director may, in his or her discretion, hold a public~~
29 ~~hearing on amendments to a credit union's articles of association or~~
30 ~~bylaws which are brought before the department.~~

31 (4) The expense of any publication required by this section shall be

1 paid by the applicant but payment shall not be a condition precedent to
2 approval by the director.

3 Sec. 6. Section 21-1729, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 21-1729 (1) A credit union may change its principal place of
6 business within this state upon written notice to, and approval by, the
7 director. The written notice may be delivered to the department in person
8 or sent by regular or electronic mail.

9 (2) A credit union may maintain automatic teller machines and point-
10 of-sale terminals at locations other than its principal office pursuant
11 to section 8-157.01.

12 Sec. 7. Section 21-1737, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 21-1737 (1) A credit union shall maintain all books, records,
15 accounting systems, and procedures in accordance with the rules and
16 regulations as the director from time to time may prescribe.

17 (2) Credit unions shall preserve or keep their records or files, or
18 photographic or microphotographic copies thereof, for a period of not
19 less than six years after the first day of January of the year following
20 the time of the making or filing of such records or files except as
21 provided in subsection (3) of this section.

22 (3)(a) Ledger sheets showing unpaid balances in favor of members of
23 credit unions shall not be destroyed unless the credit union has remitted
24 such unpaid balances to the State Treasurer in accordance with the
25 Uniform Disposition of Unclaimed Property Act. Credit unions shall retain
26 a record of every such remittance for ten years following the date of
27 such remittance.

28 (b) Corporate records that relate to the corporation or the
29 corporate existence of the credit union shall not be destroyed.

30 (4) A credit union shall not be liable for destroying records after
31 the expiration of the record retention period provided in this section

1 except for records involved in an official investigation or examination
2 about which the credit union has received notice.

3 (5) A reproduction of any credit union records shall be admissible
4 as evidence of transactions with the credit union as provided in section
5 25-12,112.

6 Sec. 8. Section 21-1743, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 21-1743 (1) The membership of a credit union shall consist of the
9 subscribers to the articles of association and such persons, societies,
10 associations, partnerships, and corporations as have been duly elected,
11 members who have subscribed for one share ~~or more shares~~, have paid for
12 such share ~~or shares~~ in whole or in part, have paid the entrance fee
13 provided in the bylaws, and have complied with such other requirements as
14 the articles of association and bylaws may specify. For purposes of
15 obtaining a loan and to vote at membership meetings, a member, to be in
16 good standing, must own ~~at least~~ one fully paid share. Credit union
17 organization shall be limited to groups of both large and small
18 membership having a common bond of occupation or association, including
19 religious, social, or educational groups, employees of a common employer,
20 persons or organizations within a geographically defined community,
21 neighborhood, or rural district, or members of a fraternal, religious,
22 labor, farm, or educational organization and the members of the immediate
23 families of such persons.

24 (2) A person having been duly admitted to membership, having
25 complied with the Credit Union Act, the articles of association, and the
26 bylaws, having paid the entrance fee, and having paid for ~~at least~~ one
27 share, shall retain full rights and privileges of membership for life
28 unless that membership is terminated by withdrawal or expulsion in the
29 manner provided by the act.

30 Sec. 9. Section 21-1749, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 21-1749 The annual meeting and any special meeting of the members of
2 the credit union shall be held in accordance with the bylaws. A special
3 meeting of the members of the credit union may be called by the members
4 or by the board of directors as provided in the bylaws. A credit union
5 shall give notice of the time and place or virtual conferencing platform
6 by which members can participate and interact for ~~of~~ any meeting of its
7 members. In the case of a special meeting, the notice of such special
8 meeting shall state the purpose of the meeting and the notice shall be
9 given at least ten calendar days prior to the date of such special
10 meeting.

11 Sec. 10. Section 21-1767, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 21-1767 (1) The board of directors shall have regular meetings as
14 often as necessary but not less frequently than six meetings annually
15 with at least one meeting in each calendar quarter. A new credit union
16 shall have regular meetings as often as necessary but not less frequently
17 than once each month for the first five years of the existence of the
18 credit union. ~~once a month unless otherwise approved by the Director of~~
19 ~~Banking and Finance.~~ Special meetings of the board may be called as
20 provided in the bylaws.

21 (2) Unless the articles of association or bylaws provide otherwise,
22 the board of directors may permit any or all directors to participate in
23 a regular or special meeting by, or conduct the meeting through the use
24 of, any means of communication by which all directors participating may
25 simultaneously hear each other during the meeting. A director
26 participating in a meeting by this means shall be deemed to be present in
27 person at the meeting.

28 (3) If the Director of Banking and Finance deems it expedient, he or
29 she may call a meeting of the board of directors of any credit union, for
30 any purpose, by giving notice to the directors of the time, place, and
31 purpose thereof at least three business days prior to the meeting, either

1 by personal service or by registered or certified mail sent to their
2 last-known addresses as shown on the credit union books.

3 (4) A full and complete record of the proceedings and business of
4 all meetings of the board of directors shall be recorded in the minutes
5 of the meeting.

6 Sec. 11. (1) The board of directors of a credit union may, in its
7 discretion, appoint one or more associate directors to serve in an
8 advisory capacity. The board shall prescribe the duties of an associate
9 director and the manner in which associate directors are appointed and
10 removed. The board shall not delegate to associate directors any of the
11 duties or responsibilities prescribed by the Credit Union Act or other
12 applicable law to be performed by the directors duly elected by the
13 members. An associate director shall not be deemed or considered to be a
14 director for any purpose under the act.

15 (2) Before appointing an associate director, the board shall confirm
16 that the person meets all of the requirements to serve as a director.

17 (3) An associate director may participate in meetings of the board
18 but may not vote or otherwise act as a director. With respect to any
19 issue that comes before the board for deliberation, the board may request
20 that any associate director in attendance leave the meeting of the board
21 and any associate director in attendance shall immediately comply with
22 the request.

23 (4) The board shall require each associate director to sign a
24 confidentiality or nondisclosure agreement to ensure that information
25 concerning the credit union remains confidential.

26 Sec. 12. Section 21-1769, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 21-1769 (1) The credit committee shall have the general supervision
29 of all loans to members and may approve or disapprove those loans subject
30 to written policies established by the board of directors.

31 (2) A credit manager having the same authority as a credit committee

1 may be appointed in lieu of a credit committee as prescribed in the
2 bylaws. The president may serve as the credit manager.

3 (3) The board of directors may appoint one or more loan officers and
4 necessary assistants.

5 (4) The loan officers shall act under the direction of the president
6 or the president's designee.

7 (5) The loan officer or credit manager may approve or disapprove
8 loans, lines of credit, or advances from lines of credit and approve
9 withdrawals of obligated members only as prescribed in writing by the
10 board of directors.

11 (6) All loans approved by the loan officer shall be reviewed by the
12 credit committee during one of its regular meetings.

13 (7) If the board of directors appoints a credit manager in lieu of a
14 credit committee, all such loans approved by loan officers shall be
15 reviewed by the credit manager.

16 (8) Other duties and responsibilities of the credit committee or
17 credit manager may be prescribed in the bylaws.

18 Sec. 13. Section 21-17,102, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 21-17,102 (1) Funds not used in loans to members may be invested:

21 (a) In securities, obligations, or other instruments of or issued by
22 or fully guaranteed as to principal and interest by the United States of
23 America or any agency or instrumentality thereof or in any trust or
24 trusts established for investing directly or collectively in the same;

25 (b) In securities, obligations, or other instruments of any state of
26 the United States, the District of Columbia, the Commonwealth of Puerto
27 Rico, and the several territories organized by Congress or any political
28 subdivision thereof;

29 (c) In deposits, obligations, or other accounts of financial
30 institutions organized under state or federal law;

31 (d) In loans to or in share accounts of other credit unions or

1 corporate central credit unions;

2 (e) In obligations issued by banks for cooperatives, federal land
3 banks, federal intermediate credit banks, federal home loan banks, the
4 Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C.
5 9101 as a wholly owned government corporation; in obligations,
6 participation certificates, or other instruments of or insured by or
7 fully guaranteed as to principal and interest by the Federal National
8 Mortgage Association or the Government National Mortgage Association; in
9 mortgages, obligations, or other securities which are or ever have been
10 sold by the Federal Home Loan Mortgage Corporation pursuant to section
11 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12
12 U.S.C. 1454 et seq.; in obligations or other instruments or securities of
13 the Student Loan Marketing Association; or in obligations, participation,
14 securities, or other instruments of or issued by or fully guaranteed as
15 to principal and interest by any other agency of the United States. A
16 state credit union may issue and sell securities which are guaranteed
17 pursuant to section 306(g) of the National Housing Act, 12 U.S.C.
18 1721(g);

19 (f) In participation certificates evidencing a beneficial interest
20 in obligations or in a right to receive interest and principal
21 collections therefrom, which obligations have been subjected by one or
22 more government agencies to a trust or trusts for which any executive
23 department, agency, or instrumentality of the United States or
24 administrator thereof has been named to act as trustee;

25 (g) In share accounts or deposit accounts of any corporate central
26 credit union in which such investments are specifically authorized by the
27 board of directors of the credit union making the investment;

28 (h) In the shares, stock, or other obligations of any other
29 organization, not to exceed ten percent of the credit union's capital and
30 not to exceed five percent of the credit union's capital in any one
31 corporation's stock, bonds, or other obligations, unless otherwise

1 approved by the director. Such authority shall not include the power to
2 acquire control, directly or indirectly, of another financial
3 institution, nor invest in shares, stocks, or obligations of any
4 insurance company or trade association except as otherwise expressly
5 provided for or approved by the director;

6 (i) In the capital stock of the National Credit Union Administration
7 Central Liquidity Facility;

8 (j) In obligations of or issued by any state or political
9 subdivision thereof, including any agency, corporation, or
10 instrumentality of a state or political subdivision, except that no
11 credit union may invest more than ten percent of its capital in the
12 obligations of any one issuer, exclusive of general obligations of the
13 issuer;

14 (k) In securities issued pursuant to the Nebraska Business
15 Development Corporation Act;~~and~~

16 (l) In participation loans with other credit unions, credit union
17 organizations, or other organizations; and -

18 (m) In shares, stocks, or member units of financial technology
19 companies in a total amount not exceeding five percent of the net worth
20 of the credit union, so long as:

21 (i) The credit union would remain well-capitalized as defined by 12
22 C.F.R. 702.102, as such regulation existed on January 1, 2023, if the
23 credit union reduced its net worth by the full investment amount at the
24 time the investment is made or at any point during the time the
25 investment is held by the credit union;

26 (ii) The credit union and the financial technology company are
27 operated in a manner that demonstrates to the public the separate
28 corporate existence of the credit union and financial technology company;

29 (iii) Before investing in a financial technology company, the credit
30 union obtains a written legal opinion as to whether the financial
31 technology company is established in a manner that will limit potential

1 exposure of the credit union to no more than the loss of funds invested
2 in the financial technology company and the legal opinion:

3 (A) Addresses factors that have led courts to put aside limited
4 liability and hold a credit union's members or directors personally
5 liable for the credit union's actions or debts such as inadequate
6 capitalization, lack of separate corporate identity, common boards of
7 directors and employees, control of one entity over another, and lack of
8 separate books and records; and

9 (B) Is provided by independent legal counsel of the credit union;

10 (iv) Before investing in the financial technology company, the
11 credit union enters into a written investment agreement with the
12 financial technology company and the agreement contains the following
13 clauses:

14 (A) That the financial technology company will: (I) Provide the
15 department with access to the books and records of the financial
16 technology company relating to the investment made by the credit union,
17 with the costs of examining those records borne by the credit union in
18 accordance with the rate established by the department by rule; (II)
19 follow generally accepted accounting principles; and (III) provide the
20 credit union with the company's financial statements on at least a
21 quarterly basis and certified-public-accountant-audited financial
22 statements on an annual basis; and

23 (B) That the financial technology company and credit union agree to
24 terminate their contractual relationship: (I) Upon ninety days' written
25 notice to the parties by the director that the safety and soundness of
26 the credit union is threatened pursuant to the department's cease and
27 desist and supervisory authority; (II) upon thirty days' written notice
28 to the parties if the credit union's net worth ratio falls below the
29 level that classifies it as well-capitalized as defined by 12 C.F.R.
30 702.102; and (III) immediately upon the parties' receipt of written
31 notice from the director when the director reasonably concludes, based

1 upon specific facts set forth in the notice to the parties, that the
2 credit union will suffer immediate, substantial, and irreparable injury
3 or loss if it remains a party to the investment agreement;

4 (v) The termination of the investment agreement between the
5 financial technology company and credit union does not operate to relieve
6 the financial technology company from repaying the investment or other
7 obligation due and owing the credit union at the time of termination; and

8 (vi) Any financial technology company in which a credit union
9 invests pursuant to this subdivision (m) that directly or indirectly
10 originates, purchases, facilitates, brokers, or services loans to
11 consumers in Nebraska does not charge an interest rate that exceeds the
12 applicable maximum rate established by the Board of the National Credit
13 Union Administration pursuant to 12 C.F.R. 701.21(c)(7). The maximum
14 interest rate described in this subdivision that may be charged by a
15 financial technology company applies to all consumer loans and consumer
16 credit products; and

17 (n) In insurance policies and other investment products to fund
18 employee benefit plans for its employees not to exceed fifteen percent of
19 the net worth of a credit union from a single issuer or twenty-five
20 percent of the net worth of a credit union in aggregate. Employee benefit
21 plan has the same meaning as in 29 U.S.C. 1002(3), as such section
22 existed on January 1, 2023. If the employee benefits arrangement does not
23 present a risk to the safety and soundness of the domestic credit union
24 as determined by the director, the purchase of those investment products
25 is not subject to the limitations of the Credit Union Act.

26 (2) For purposes of this section, financial technology company
27 includes any corporation, partnership, limited liability company, or
28 other entity organized under the laws of Nebraska, another state, or the
29 United States of America, the principal business of which is the
30 provision of financial products or financial services and the application
31 of technological interventions, including, without limitation,

1 specialized software or algorithm processes, products, or solutions, to
2 improve and automate the delivery and use of those financial products or
3 financial services that (a) currently relate or may relate to the daily
4 operations of credit unions, (b) are of current or prospective benefit to
5 the members of credit unions, or (c) are of current or prospective
6 benefit to consumers eligible for membership in credit unions.

7 (3) ~~(2)~~ In addition to investments expressly permitted by the Credit
8 Union Act, a credit union may make any other type of investment approved
9 by the department by rule, regulation, or order.

10 Sec. 14. Section 21-17,109, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 21-17,109 (1) Any credit union organized under the Credit Union Act
13 may, with the approval of the department, merge or consolidate with one
14 or more other credit unions organized under the act or under the laws of
15 the United States, if the credit unions merging or consolidating possess
16 coinciding common bonds of association.

17 (2) When two or more credit unions merge or consolidate, one shall
18 be designated as the continuing credit union or a totally new credit
19 union shall be organized. If the latter procedure is followed, the new
20 credit union shall be organized under the Credit Union Act or under the
21 laws of the United States. All participating credit unions other than the
22 continuing or new credit union shall be designated as merging credit
23 unions.

24 (3) Any merger or consolidation of credit unions shall be done
25 according to a plan of merger or consolidation. After approval by the
26 boards of directors of all participating credit unions, the plan shall be
27 submitted to the department for preliminary approval. If the plan
28 includes the organization of a new credit union, all documents required
29 pursuant to section 21-1724 shall be submitted as a part of the plan. In
30 addition, each participating credit union shall submit the following
31 information:

1 (a) The time and place of the meeting of the boards of directors at
2 which the plan of merger or consolidation was agreed upon;

3 (b) The vote of the directors in favor of the adoption of the plan;
4 and

5 (c) A copy of a resolution or other action by which the plan was
6 agreed upon.

7 The department shall grant preliminary approval if the plan has been
8 approved properly by the boards of directors and if the documentation
9 required to organize a new credit union, if any, complies with section
10 21-1724. The director, in his or her discretion, may order a hearing be
11 held if he or she determines that the condition of the acquiring credit
12 union warrants a hearing or that the plan of merger would be unfair to
13 the merging credit union.

14 (4) After the department grants preliminary approval, each merging
15 credit union, except the continuing credit union, shall, unless waived by
16 the department, conduct a membership vote on its participation in the
17 plan. The vote shall be conducted either at a special meeting called for
18 that purpose or by mail ballot. If a majority of the members voting
19 approve the plan, the credit union shall submit a record of that fact to
20 the department indicating the vote by which the members approved the plan
21 and either the time and place of the membership meeting or the mailing
22 date and closing date of the mail ballot.

23 ~~(5) The department may waive any voting requirements described in~~
24 ~~the Credit Union Act for any credit union upon the determination that it~~
25 ~~is in the best interests of the membership or that the credit union is~~
26 ~~insolvent or in imminent danger of becoming insolvent.~~

27 (5) ~~(6)~~ The director shall grant final approval of the plan of
28 merger or consolidation after determining that the requirements of
29 subsections (1) through (4) of this section have been met in the case of
30 each merging credit union. If the plan of merger or consolidation
31 includes the organization of a new credit union, the department must

1 approve the organization of the new credit union under section 21-1724 as
2 part of the approval of the plan of merger or consolidation. The
3 department shall notify all participating credit unions of the plan.

4 (6) ~~(7)~~ Upon final approval of the plan by the department, all
5 property, property rights, and members' interests in each merging credit
6 union shall vest in the continuing or new credit union as applicable
7 without deed, obligations, and other instruments of transfer, and all
8 debts, obligations, and liabilities of each merging credit union shall be
9 deemed to have been assumed by the continuing or new credit union. The
10 rights and privileges of the members of each participating credit union
11 shall remain intact. If a person is a member of more than one of the
12 participating credit unions, the person shall be entitled to only a
13 single set of membership rights in the continuing or new credit union.

14 (7) ~~(8)~~ Notwithstanding any other provision of law, the department
15 may authorize a merger or consolidation of a credit union which is
16 insolvent or which is in danger of insolvency with any other credit union
17 or may authorize a credit union to purchase any of the assets of or
18 assume any of the liabilities of any other credit union which is
19 insolvent or which is in danger of insolvency, if the department is
20 satisfied that:

21 (a) An emergency requiring expeditious action exists with respect to
22 such credit union;

23 (b) Other alternatives for such credit union are not reasonably
24 available; and

25 (c) The public interest would best be served by the approval of such
26 merger, consolidation, purchase, or assumption.

27 (8) ~~(9)~~ Notwithstanding any other provision of law, the director may
28 authorize an institution, the deposits or accounts of which are insured
29 by the Federal Deposit Insurance Corporation or any derivative thereof,
30 to purchase any assets of or assume any liabilities of a credit union
31 which is insolvent or in danger of insolvency, except that prior to

1 exercising this authority the director shall attempt to effect a merger
2 or consolidation with, or purchase or assumption by, another credit union
3 as provided in subsection (7) ~~(8)~~ of this section.

4 (9) ~~(10)~~ For purposes of the authority contained in subsection (8)
5 ~~(9)~~ of this section, insured share accounts of each credit union may,
6 upon consummation of the purchase or assumption, be converted to insured
7 deposits or other comparable accounts in the acquiring institution, and
8 the department and the National Credit Union Share Insurance Fund shall
9 be absolved of any liability to the credit union's members with respect
10 to those accounts.

11 Sec. 15. Original sections 21-1701, 21-1702, 21-1705, 21-1725.01,
12 21-1729, 21-1737, 21-1743, 21-1749, 21-1767, 21-1769, 21-17,102, and
13 21-17,109, Reissue Revised Statutes of Nebraska, are repealed.

14 Sec. 16. The following section is outright repealed: Section
15 21-1788, Reissue Revised Statutes of Nebraska.