

CHAPTER 108

AN ACT authorizing credit unions to serve as public depositories and amending and supplementing P.L.1970, c.236 and amending P.L.1984, c.171.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read as follows:

C.17:9-41 Definitions.

1. In this act, unless the context otherwise requires:

"Adequately capitalized" means, with respect to a public depository, "adequately capitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section 216 of title II of the "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)), as applicable, and their implementing regulations;

"Association" means any State or federally chartered savings and loan association;

"Capital funds" means (a) in the case of a State bank or national bank or capital stock savings bank, the aggregate of the capital stock, surplus and undivided profits of the bank or savings bank; (b) in the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank; (c) in the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association; and (d) in the case of a credit union, the aggregate of all reserves required by any law or regulation, and the capital deposits of the credit union;

"Commissioner" means the Commissioner of Banking and Insurance;

"Credit union" means a credit union as defined by section 2 of P.L.1984, c.171 (C.17:13-80);

"Critically undercapitalized" means, with respect to a public depository, "critically undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section 216 of title II of the "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)), as applicable, and their implementing regulations;

"Defaulting depository" means a public depository as to which an event of default has occurred;

"Eligible collateral" means:

- (a) Obligations of any of the following:

- (1) The United States;

- (2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

- (3) The State of New Jersey or any of its political subdivisions;

- (4) Any other governmental unit; or

- (b) Obligations guaranteed or insured by any of the following, to the extent of that insurance or guaranty:

- (1) The United States;

- (2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

(3) The State of New Jersey or any of its political subdivisions; or

(c) Obligations now or hereafter authorized by law as security for public deposits;

(d) Obligations in which the State, political subdivisions of the State, their officers, boards, commissions, departments and agencies may invest pursuant to an express authorization under any law authorizing the issuance of those obligations;

(e) Obligations, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank; or

(f) Any other obligations as may be approved by the commissioner by regulation or by specific approval;

"Event of default" means issuance of an order of a supervisory authority or of a receiver restraining a public depository from making payments of deposit liabilities;

"Governmental unit" means any county, municipality, school district or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department or agency of any of the foregoing having custody of funds;

"Maximum liability" of a public depository means, with respect to any event of default, a sum equal to 4% of the average daily balance of collected public funds held on deposit by the depository during the three-month period ending on the last day of the month immediately preceding the occurrence of the event of default that exceed the amount of such public fund deposits that are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or by any other agency of the United States which insures deposits made in public depositories;

"Net deposit liability" means the deposit liability of a defaulting depository to a governmental unit after deduction of any deposit insurance with respect thereto;

"Obligations" means any bonds, notes, capital notes, bond anticipation notes, tax anticipation notes, temporary notes, loan bonds, mortgage related securities, or mortgages;

"Public depository" means a State or federally chartered bank, savings bank, credit union, or an association located in this State or a state or federally chartered bank, savings bank, credit union, or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund and which receives or holds public funds on deposit;

"Public funds" means the funds of any governmental unit, but does not include deposits held by the State of New Jersey Cash Management Fund;

"Significantly undercapitalized" means, with respect to a public depository, "significantly undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section 216 of title II of the "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)), as applicable, and their implementing regulations;

"Undercapitalized" means, with respect to a public depository, "undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section 216 of title II of the "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)), as applicable, and their implementing regulations;

"Valuation date" means March 31, June 30, September 30, and December 31;

"Well capitalized" means, with respect to a public depository, "well capitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section 216 of title II of the

“Federal Credit Union Act,” Pub.L.73-467 (12 U.S.C. s.1790d(c)), as applicable, and their implementing regulations.

2. Section 4 of P.L.1970, c.236 (C.17:9-44) is amended to read as follows:

C.17:9-44 Amount of collateral required as security; exceptions.

4. a. (1) No public depository, notwithstanding the collateral requirements set forth under section 3 of P.L.2009, c.326 (C.17:9-43.1), shall be required to maintain any eligible collateral pursuant to this act as security for any deposit or deposits of any governmental unit to the extent that such deposit or deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or by any other agency of the United States which insures deposits made in public depositories.

(2) In the case of any public depository which has not held public funds on deposit for all of a three-month period as measured pursuant to the provisions of section 3 of P.L.2009, c.326 (C.17:9-43.1), the commissioner shall, notwithstanding the provisions of that section, prescribe the amount of eligible collateral required to be maintained.

(3) Depositories shall have the right to make substitutions of eligible collateral at any time. The income from eligible collateral shall belong to the public depository without restriction.

b. (Deleted by amendment, P.L.2009, c.326)

c. All collateral required to be maintained shall be deposited with any Federal Reserve Bank or Federal Home Loan Bank, or any other banking institution located in this State or a contiguous state as authorized by regulation of the commissioner, and which has capital funds of not less than \$25,000,000.00. Notwithstanding the foregoing, the commissioner may authorize public depositories to hold and maintain the required collateral in such a manner as he deems consistent with the purposes of this act.

d. The market value of eligible collateral maintained pursuant to this section on any valuation date shall be presumed to be the market value of such collateral continuing until the next succeeding valuation date.

3. Section 5 of P.L.1970, c.236 (C.17:9-45) is amended to read as follows:

C.17:9-45 Proceedings after determination of default; pro rata distribution of collateral; assessment of other public depositories for deficiency.

5. When the commissioner determines that an event of default has occurred, he shall proceed in the following manner:

a. Within 20 days after the occurrence of the event of default, he shall ascertain the amount of public funds on deposit in the defaulting depository as disclosed by its records and the amount thereof covered by federal deposit insurance and certify the amounts thereof to each affected governmental unit;

b. Within 10 days after receipt of such certification, each such governmental unit shall furnish to the commissioner verified statements of its public deposits in such defaulting depository as disclosed by its records;

c. Upon receipt of such certificate and statements, he shall ascertain and fix the amount of such public funds on deposit in such defaulting depository, net after deduction of any deposit insurance;

d. He shall ascertain the amount derived or to be derived from the liquidation of the collateral maintained by the defaulting depository pursuant to section 4 of this act, and shall

distribute such proceeds pro rata among the governmental units affected to the extent necessary to satisfy the net deposit liabilities to such governmental units;

e. If the proceeds of the sale of the collateral of a defaulting depository which is a State bank, a national bank, a savings bank, or a credit union are insufficient to pay in full the net deposit liability of such depository to all affected governmental units, he shall assess the deficiency against all other such public depositories having public funds on deposit as of the occurrence of the event of default in the proportion that the maximum liability of each such other public depository bears to the aggregate of the maximum liabilities of all such other depositories, but no such assessment shall exceed the maximum liability of any such other depository;

f. If the proceeds of the sale of the collateral of a defaulting depository which is an association are insufficient to pay in full the net deposit liability of such depository to all affected governmental units, he shall assess the deficiency against all such other public depositories having public funds on deposit as of the occurrence of the event of default in the proportion that the maximum liability of each such other public depository bears to the aggregate of the maximum liabilities of all such other depositories, but no such assessment shall exceed the maximum liability of any such other depository;

g. Assessments so made by the commissioner shall be payable on the fifth day following the demand therefor by the commissioner. On default of such payment by any such other public depository, the commissioner shall take possession of and liquidate so much of the eligible collateral maintained by such depository as shall be necessary to satisfy the assessment so made. If the proceeds of the liquidation of the eligible security are insufficient to pay such assessment in full, the commissioner may sue to recover the amount of the deficiency within the limits of the depository's maximum liability.

h. All sums so collected by the commissioner shall be paid by him to the governmental units having deposits in the defaulting depository in the proportion that the net deposit liability to each such governmental unit bears to the aggregate of the net deposit liabilities to all such governmental units;

i. No State bank, national bank, savings bank, or credit union shall be liable with respect to the occurrence of an event of default of an association, and no association shall be liable with respect to the occurrence of an event of default of a State bank, a national bank, a savings bank, or a credit union.

4. Section 11 of P.L.1984, c.171 (C.17:13-89) is amended to read as follows:

C.17:13-89 Powers.

11. A credit union's powers shall include, but not be limited to, the power to:

- a. Make contracts;
- b. Sue and be sued;
- c. Adopt and use a common seal and alter same;
- d. Acquire, lease, hold, assign, pledge, hypothecate, sell and otherwise dispose of property, either in whole or in part, necessary or incidental to its operations;
- e. Offer its members and other credit unions, shares, share certificates, deposits, deposit certificates, or share drafts as provided in this act;
- f. Lend its funds to its members as hereinafter provided;
- g. Borrow money from any source, provided that a credit union shall notify the commissioner in writing of its intention to borrow in excess of an aggregate of 50% of its shares and undivided earnings;

- h. Discount or sell any of its assets, and purchase the assets of another credit union, subject to the approval of the commissioner;
- i. Make deposits and invest in legally chartered banks, savings banks, savings and loan associations, trust companies, and other credit unions, including corporate credit unions, and invest funds as otherwise provided in this act;
- j. Hold membership in other credit unions organized under this act, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law;
- k. Act as fiscal agent for and receive payment on shares or deposits, or both, from the federal government, this State, or any agency or political subdivision thereof;
- l. Have and exercise all the powers of corporations organized under Title 14A of the New Jersey Statutes which are not inconsistent with this act;
- m. Maintain service facilities, including automated terminals at locations other than its principal office upon the approval of the commissioner. The maintenance of these facilities shall be reasonably necessary to furnish service to its members. A credit union may join with one or more financial institutions in the operation of a service facility to meet member needs;
- n. Contract with outside vendors to make insurance and group purchasing plans available to its members and receive compensation from the vendors in return for performing administrative functions on their behalf;
- o. Participate in loans to credit union members jointly with other credit unions, credit union organizations, or financial institutions, provided that the originating credit union retains an interest of at least 10% of the face amount of the loan;
- p. Participate in any guaranteed loan program of the federal or state government;
- q. Purchase the conditional sales contracts, notes, and similar instruments of its members;
- r. Purchase and maintain insurance on behalf of any person who is an officer, director, employee, or agent of the credit union;
- s. Collect, receive and disburse monies in connection with the providing of negotiable checks, money orders, travelers' checks, and similar instruments, and for any other purposes which may provide benefit or convenience to its members, and to charge a reasonable fee for these services;
- t. Declare dividends to its members, as provided in the bylaws or by rules and regulations of the commissioner;
- u. Participate in government programs designed to alleviate social and economic problems at the community, state, or regional levels; and
- v. Act as a public depository pursuant to the provisions of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.).

C.17:9-43.2 Designation of nonprofit organization as recipient of funds.

5. a. Within six months of the effective date of this section, the Department of Education, in consultation with the Department of Banking and Insurance, shall designate a nonprofit corporation, organized under the "New Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq., and with a history and experience in promoting financial education and financial literacy and delivering financial education and financial literacy services, to serve as the recipient of the funds due from credit unions pursuant to subsection b. of this section. The designation by the department:

(1) shall include any requirements determined by the Department of Education to be necessary to insure proper oversight of the expenditure of the funds by the nonprofit corporation for financial education and financial literacy purposes; and

(2) may include a requirement that the nonprofit corporation provide funding for the high school pilot program in personal financial literacy established pursuant to section 1 of P.L.2009, c.153 (C.18A:6-115) or any expansion of that program.

b. (1) The chief financial officer of a credit union that qualifies as a public depository pursuant to P.L.1970, c.236 (C.17:9-41 et seq.) shall transmit to the Department of Banking and Insurance with each fourth quarter report required annually pursuant to section 3 of P.L.1970, c.326 (C.17:9-43) a written certification that the credit union has forwarded to the nonprofit corporation designated pursuant to subsection a. of this section a sum equal to the average daily balance, if the average daily balance is in excess of \$2 million, for the preceding year of the public funds on deposit at the credit union, multiplied by the appropriate factor, as determined in accordance with the following schedule:

(a) an average daily balance in excess of \$2 million but less than \$25 million: multiply by a factor of .0005.

(b) an average daily balance of \$25 million or over but less than \$50 million: multiply by a factor of .00075.

(c) an average daily balance of \$50 million or over: multiply by a factor of .0010.

However, in no event, shall a credit union be required to forward a sum in excess of \$100,000 in any one year.

(2) The certification shall comply with any requirements determined by the department to be necessary for the calculation and transmission of such funds.

c. The Department of Education may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement the provisions of subsection a. of this section. The Department of Banking and Insurance may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement the provisions of subsection b. of this section.

6. This act shall take effect immediately.

Approved August 18, 2011.