

AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2503

Introduced by Assembly Member Steinberg
(Coauthor: Assembly Member Longville)

February 24, 2000

An act to ~~add Section 1633.01 to the Civil Code, to amend Sections 14202, 14400, 14405, 14800, 14860 of, and to repeal Sections 14864 and 15256 of, the Financial Code, and to amend Section 1648 of the Insurance Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2503, as amended, Steinberg. Financial institutions: electronic contract formation: credit unions.

(1) ~~Existing law generally describes the requirements for entering into a valid contract.~~

~~This bill would provide that an application by a consumer to enter into an account or loan agreement with a financial institution, as defined, which account or loan agreement is transmitted by the consumer to the financial institution electronically and is accompanied by the prospective customer's electronic or digital signature, shall be deemed to be a valid contract if the financial institution accepts the account or loan agreement.~~

~~This bill would also require an agreement that is transmitted electronically to comply with all applicable~~

~~federal and state securities laws and regulations relating to disclosures to prospective customers, as specified.~~

~~(2)~~ Existing law permits the Commissioner of Financial Institutions by regulation to authorize credit unions organized under the California Credit Union Law to engage in any activity authorized by law or regulation for credit unions organized under the laws of the United States.

This bill would additionally permit the commissioner, by regulation, to authorize credit unions to engage in any activity permitted for other licensees under the commissioner's authority, and for credit unions organized under the laws of any other state.

~~(3)~~

~~(2)~~ Existing law specifies the accounts which make up the equity capital of a credit union.

This bill revises what accounts, dues, and fees make up the equity capital of a credit union, and permits the Commissioner of Financial Institutions to approve the inclusion of other forms of capital not specified.

~~(4)~~

~~(3)~~ Existing law permits a credit union to become a member of any organization or organizations composed of credit unions, credit associations, or chambers of commerce.

This bill would additionally permit a credit union to become a member of any organization or organizations composed of financial institutions or nonprofit organizations.

~~(5)~~

~~(4)~~ Existing law permits a credit union to admit to membership those persons qualified for membership upon the occurrence of either the payment of an entrance fee or upon the purchase of one or more shares in the credit union.

This bill would also permit a credit union to admit to membership those persons who purchase a membership in the credit union as provided in the credit union's bylaws.

~~(6)~~

~~(5)~~ Existing law permits a credit union to issue shares in a revocable trust when the settlor is a member of the credit union issuing the shares in his or her own right.



This bill would provide that for a trust that has joint settlers, who are husband and wife, that only one settlor need be a member of the credit union.

~~(7)~~

(6) Existing law provides that the shares and certificates for funds received of members of any credit union and all the accumulation on those shares and certificates are exempt from enforcement of a money judgment in the amount and in the manner provided in specified provisions of the Code of Civil Procedure that relate to exemptions.

This bill would repeal that provision.

~~(8)~~

(7) Existing law exempts credit unions from franchise and income taxes. Existing law provides that for the purpose of taxation pursuant to the Bank and Corporation Franchise Tax Law, the corporate existence of any credit union is terminated at the time of the filing of a certificate of election to dissolve with the Secretary of State.

This bill would repeal the provision of law specifying when the corporate existence of any credit union is terminated for purposes of the Bank and Corporation Franchise Tax Law.

~~(9)~~

(8) Existing law provides that an unincorporated association or nonprofit corporation that is not the holder of a certificate of authority issued to motor clubs under specified provisions of the Insurance Code is not eligible for—*a an* insurance broker or agent production license unless each member thereof possesses an individual license to transact each class of insurance authorized by the license or is a natural person named on the license to transact thereunder.

This bill would exempt any state chartered credit union from the above requirements.

~~(10)~~

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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

1 ~~SECTION 1. Section 1633.01 is added to the Civil~~
2 ~~Code, to read:~~
3 ~~1633.01. (a) Notwithstanding any other provision of~~
4 ~~law, an application by a consumer to enter into an~~
5 ~~account or loan agreement with a financial institution,~~
6 ~~which account or loan agreement is transmitted~~
7 ~~electronically and is accompanied by the prospective~~
8 ~~customer's electronic signature or digital signature as~~
9 ~~described in subdivisions (d), (e), (f), and (g), shall be~~
10 ~~deemed, upon acceptance by the financial institution, to~~
11 ~~be a fully executed, valid, enforceable, and irrevocable~~
12 ~~written contract, unless grounds exist which would~~
13 ~~render any other contract invalid, unenforceable, or~~
14 ~~revocable.~~
15 ~~(b) Nothing in this section abrogates or limits any~~
16 ~~existing law that would otherwise apply to contracts~~
17 ~~governed by this section, or any theory of liability or any~~
18 ~~remedy otherwise available at law.~~
19 ~~(c) "Financial institution," for purposes of this section,~~
20 ~~means any bank, savings and loan association, or credit~~
21 ~~union licensed under the laws of this state or the United~~
22 ~~States.~~
23 ~~(d) "Electronic" means relating to technology having~~
24 ~~electrical, digital, magnetic, wireless, optical,~~
25 ~~electromagnetic, or similar capabilities.~~
26 ~~(e) "Electronic record" means a record created,~~
27 ~~generated, sent, communicated, received, or stored~~
28 ~~electronically.~~
29 ~~(f) "Electronic signature" means an electronic sound,~~
30 ~~symbol, or process attached to or logically associated with~~
31 ~~an electronic record and executed or adopted by a person~~
32 ~~with the intent to sign the electronic record.~~
33 ~~(g) "Digital signature," for the purposes of this~~
34 ~~section, means an electronic identifier, created by a~~
35 ~~computer, that is intended by the party using it to have~~
36 ~~the same force and effect as the use of a manual signature.~~
37 ~~The use of a digital signature shall have the same force or~~



1 ~~effect as a manual signature if it embodies all of the~~
2 ~~following attributes:~~

- 3 ~~(1) It is unique to the person using it.~~
- 4 ~~(2) It is capable of verification.~~
- 5 ~~(3) It is under the sole control of the person using it.~~
- 6 ~~(4) It is linked to data in a manner that if the data is~~
7 ~~changed, the digital signature is invalidated.~~

8 ~~(h) The use of an electronic signature or digital~~
9 ~~signature shall have the same force or effect as a manual~~
10 ~~signature.~~

11 ~~(i) The application that is transmitted electronically~~
12 ~~pursuant to subdivision (a) shall comply with all~~
13 ~~applicable federal and state securities laws and~~
14 ~~regulations relating to disclosures to prospective~~
15 ~~customers. Unless those laws and regulations currently~~
16 ~~require disclosures to be displayed or printed in bold, to~~
17 ~~be of specific type or print size, and to be placed~~
18 ~~prominently at specified locations within the application,~~
19 ~~the disclosures shall be displayed prominently and~~
20 ~~printed in capital letters, in bold type, and displayed or~~
21 ~~printed immediately above the signature line.~~
22 ~~Disclosures shall be written in plain English. The full text~~
23 ~~of the disclosures shall be contained in the application as~~
24 ~~required by this subdivision.~~

25 ~~(j) Whenever a disclosure to a prospective customer is~~
26 ~~required under federal or state law or regulation to be~~
27 ~~confirmed as having been made, the agreement that is~~
28 ~~transmitted electronically pursuant to subdivision (a)~~
29 ~~shall provide a means by which the prospective customer~~
30 ~~shall confirm that he or she has read the disclosure.~~

31 ~~SEC. 2.~~

32 *SECTION 1.* Section 14202 of the Financial Code is
33 amended to read:

34 14202. (a) The commissioner may by regulation
35 authorize credit unions organized under this division to
36 engage in any activity authorized by law or regulation for
37 any of the following:

- 38 (1) Credit unions organized under the laws of the
39 United States.



1 (2) Other licensees under the authority of the
2 commissioner.

3 (3) Credit unions organized under the laws of any
4 other state.

5 (b) Any regulation issued pursuant to this section shall
6 expire on the first day of January two years following the
7 end of the calendar year in which the regulation was
8 promulgated.

9 ~~SEC. 3.~~

10 *SEC. 2.* Section 14400 of the Financial Code is
11 amended to read:

12 14400. (a) The savings capital of a credit union shall
13 consist of the payments made by members on shares as set
14 forth in the credit union's written savings capital
15 structure policy pursuant to Section 14862.

16 (b) The equity capital of the credit union shall consist
17 of all of the following:

18 (1) Consideration paid for memberships in the credit
19 union.

20 (2) Entrance fees paid to become a member of the
21 credit union.

22 (3) Moneys held in the credit union's regular reserve
23 account.

24 (4) Dues, fees, and assessments paid by the credit
25 union's members, excluding fees charged in connection
26 with member share accounts or loans that are held in a
27 contingency reserve account established either by the
28 credit union's board of directors or at the direction of the
29 commissioner.

30 (5) Retained earnings in the credit union's undivided
31 earnings account less all losses in excess of the credit
32 union's regular reserve account.

33 (6) Other forms of capital approved by the
34 commissioner.

35 ~~SEC. 4.~~

36 *SEC. 3.* Section 14405 of the Financial Code is
37 amended to read:

38 14405. Every credit union may:

39 (a) Become a member of any organization or
40 organizations composed of credit unions, credit



1 associations, chambers of commerce, financial
2 institutions, or nonprofit organizations.

3 (b) Pay dues and assessments as may be levied upon it
4 by any organization of which it is a member.

5 ~~SEC. 5.~~

6 *SEC. 4.* Section 14800 of the Financial Code is
7 amended to read:

8 14800. (a) Every credit union may admit to
9 membership those persons qualified for membership
10 upon the occurrence of any of the following:

11 (1) Upon the purchase of a membership in the credit
12 union as provided in the credit union's bylaws.

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

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

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

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

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

40 ~~SEC. 6.~~



1 SEC. 5. Section 14860 of the Financial Code is
2 amended to read:

3 14860. Except as provided in this section and Part 2
4 (commencing with Section 5100) of Division 5 of the
5 Probate Code, no credit union shall exercise trust powers
6 except upon qualifying as a trust company pursuant to
7 Division 1 (commencing with Section 99).

8 (a) Notwithstanding any other provisions of law
9 relating to trusts and trust authority, subject to the
10 regulations of the commissioner, a credit union may act
11 as a trustee or custodian, and may receive reasonable
12 compensation for so acting, under any written trust
13 instrument or custodial agreement created or organized
14 in the United States which is a part of a pension plan for
15 its members or groups or organizations of its members,
16 which qualifies or has qualified for specific tax treatment
17 under Section 401, 408, 408A, 457, or 530 of the Internal
18 Revenue Code, Title 26 of the United States Code, or any
19 deferred compensation plan for the benefit of the credit
20 union's employees, provided the funds received pursuant
21 to these plans are invested as provided in Section 16040
22 of the Probate Code. All funds held by a credit union as
23 trustee or in a custodial capacity shall be maintained in
24 accordance with applicable laws and rules and
25 regulations as may be promulgated by the Secretary of
26 Labor, the Secretary of the Treasury, or any other
27 authority exercising jurisdiction over the trust or
28 custodial accounts. The credit union shall maintain
29 individual records for each participant or beneficiary that
30 show in detail all transactions relating to the funds of each
31 participant or beneficiary.

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



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

3 (1) When shares are issued in a revocable trust, the
4 settlor shall be a member of the credit union issuing the
5 shares in his or her own right. If the trust has joint settlers,
6 who are husband and wife, then only one settlor need be
7 a member of the credit union.

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

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

17 ~~SEC. 7.~~

18 *SEC. 6.* Section 14864 of the Financial Code is
19 repealed.

20 ~~SEC. 8.~~

21 *SEC. 7.* Section 15256 of the Financial Code is
22 repealed.

23 ~~SEC. 9.~~

24 *SEC. 8.* Section 1648 of the Insurance Code is
25 amended to read:

26 1648. (a) An unincorporated association or nonprofit
27 corporation that is not the holder of a certificate of
28 authority issued pursuant to Part 5 (commencing with
29 Section 12140), Division 2 of this code is not eligible for a
30 license under this chapter unless each member thereof
31 possesses an individual license to transact each class of
32 insurance authorized by the license or is a natural person
33 named on the license to transact thereunder.

34 (b) This section is not applicable to any nonprofit
35 cemetery company exempt from the taxes imposed by
36 Part 11 (commencing with Section 23001), Division 2 of
37 the Revenue and Taxation Code under the provisions of
38 Section 23701c of the Revenue and Taxation Code.

39 (c) This section is not applicable to any state chartered
40 credit union.



1 ~~SEC. 10.~~

2 *SEC. 9.* This act is an urgency statute necessary for
3 the immediate preservation of the public peace, health,
4 or safety within the meaning of Article IV of the
5 Constitution and shall go into immediate effect. The facts
6 constituting the necessity are:

7 In order to ensure the validity of the increasing number
8 of account agreements or loan agreements entered into
9 through electronic commerce, and to provide credit
10 unions with necessary authority to service their present
11 and future customers, it is necessary that this act take
12 effect immediately.

