## **102ND GENERAL ASSEMBLY**

## State of Illinois

## 2021 and 2022

### HB4628

Introduced 1/21/2022, by Rep. Jonathan Carroll

## SYNOPSIS AS INTRODUCED:

205 ILCS	305/8	from	Ch.	17,	par.	4409
205 ILCS	305/9	from	Ch.	17,	par.	4410
205 ILCS	305/20	from	Ch.	17,	par.	4421
205 ILCS	305/59	from	Ch.	17,	par.	4460

Amends the Illinois Credit Union Act. In provisions concerning reports and examinations, provides that one or more credit unions may be examined less frequently than biennially upon the Secretary of Financial and Professional Regulation's written statement. Provides that the Secretary's written statement shall include a finding that good cause exists; a finding that there is no reasonable expectation that harm to members will result; and, to the extent reasonable under the circumstances, identification of the affected credit unions and the expected frequency of examination. Provides that a written statement made pursuant to the provisions may be superseded by a subsequent statement. Provides that the Secretary is not required to conduct examinations that the Secretary would have been required to conduct but for a written statement. Provides that the written statement shall not be confidential supervisory information except to the extent it names or permits the identification of specific credit unions. Provides that the Secretary may accept an examination from the National Credit Union Administration or a private insurer instead of an examination conducted by the Department of Financial and Professional Regulation or by a public accountant registered by the Department. Provides that upon amendment of a credit union's bylaws (rather than upon amendment of a credit union's bylaws approved by the members), in all elections for directors, every member who is a natural person shall have the right to cast one vote in person, by proxy, or by secure electronic record if approved by the board of directors, for as many persons as there are directors to be elected. Changes a reference from "categories" to "investment grades". Makes other changes. Effective immediately.

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AN ACT concerning regulation.

# Be it enacted by the People of the State of Illinois, represented in the General Assembly:

4 Section 5. The Illinois Credit Union Act is amended by 5 changing Sections 8, 9, 20 and 59 as follows:

6 (205 ILCS 305/8) (from Ch. 17, par. 4409)

Sec. 8. Secretary's powers and duties. Credit unions are regulated by the Department. The Secretary in executing the powers and discharging the duties vested by law in the Department has the following powers and duties:

(1) To exercise the rights, powers and duties set 11 12 forth in this Act or any related Act. The Director shall 13 oversee the functions of the Division and report to the 14 Secretary, with respect to the Director's exercise of any of the rights, powers, and duties vested by law in the 15 16 Secretary under this Act. All references in this Act to 17 the Secretary shall be deemed to include the Director, as a person authorized by the Secretary or this Act to assume 18 19 responsibility for the oversight of the functions of the Department relating to the regulatory supervision of 20 21 credit unions under this Act.

22 (2) To prescribe rules and regulations for the 23 administration of this Act. The provisions of the Illinois

Administrative Procedure Act are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all administrative rules and procedures of the Department under this Act.

(3) To direct and supervise all the administrative and 5 6 technical activities of the Department including the 7 employment of a Credit Union Supervisor who shall have knowledge in the theory and practice of, or experience in, 8 9 the operations or supervision of financial institutions, 10 preferably credit unions, and such other persons as are 11 necessary to carry out his functions. The Secretary shall 12 ensure that all examiners appointed or assigned to examine the affairs of State-chartered credit unions possess the 13 14 necessary training and continuing education to effectively 15 execute their jobs.

16 (4) To issue cease and desist orders when in the 17 opinion of the Secretary, a credit union is engaged or has engaged, or the Secretary has reasonable cause to believe 18 19 the credit union is about to engage, in an unsafe or 20 unsound practice, or is violating or has violated or the Secretary has reasonable cause to believe is about to 21 22 violate a law, rule or regulation or any condition imposed 23 in writing by the Department.

(5) To suspend from office and to prohibit from
 further participation in any manner in the conduct of the
 affairs of <u>any</u> his credit union any director, officer or

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committee member who has committed any violation of a law, 1 rule, regulation or of a cease and desist order or who has 2 3 engaged or participated in any unsafe or unsound practice in connection with the credit union or who has committed 4 5 or engaged in any act, omission, or practice which 6 constitutes a breach of his fiduciary duty as such 7 director, officer or committee member, when the Secretary has determined that such action or actions have resulted 8 9 or will result in substantial financial loss or other 10 damage that seriously prejudices the interests of the 11 members.

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12 (6) To assess a civil penalty against a credit union13 provided that:

(A) the Secretary reasonably determines, based on
objective facts and an accurate assessment of
applicable legal standards, that the credit union has:

17 (i) committed a violation of this Act, any
18 rule adopted in accordance with this Act, or any
19 order of the Secretary issued pursuant to his or
20 her authority under this Act; or

21 (ii) engaged or participated in any unsafe or 22 unsound practice;

(B) before a civil penalty is assessed under this
item (6), the Secretary must make the further
reasonable determination, based on objective facts and
an accurate assessment of applicable legal standards,

1 that the credit union's action constituting a
2 violation under subparagraph (i) of paragraph (A) of
3 item (6) or an unsafe and unsound practice under
4 subparagraph (ii) of paragraph (A) of item (6):

5 (i) directly resulted in a substantial and 6 material financial loss or created a reasonable 7 probability that a substantial and material 8 financial loss will directly result; or

(ii) constituted willful misconduct or a material breach of fiduciary duty of any director, officer, or committee member of the credit union;

12 Material financial loss, as referenced in this shall be assessed 13 paragraph (B), in light of 14 surrounding circumstances and the relative size and 15 nature of the financial loss or probable financial 16 loss. Certain benchmarks shall be used in determining 17 whether financial loss is material, such as a percentage of total assets or total gross income for 18 19 the immediately preceding 12-month period. Absent 20 compelling and extraordinary circumstances, no civil penalty shall be assessed, unless the financial loss 21 22 or probable financial loss is equal to or greater than 23 either 1% of the credit union's total assets for the 24 immediately preceding 12-month period, or 1% of the 25 credit union's total gross income for the immediately 26 preceding 12-month period, whichever is less;

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1 (C) before a civil penalty is assessed under this 2 item (6), the credit union must be expressly advised 3 in writing of the:

4 (i) specific violation that could subject it 5 to a penalty under this item (6); and

(ii) specific remedial action to be taken within a specific and reasonable time frame to avoid imposition of the penalty;

9 (D) Civil penalties assessed under this item (6) 10 shall be remedial, not punitive, and reasonably 11 tailored to ensure future compliance by the credit 12 union with the provisions of this Act and any rules 13 adopted pursuant to this Act;

(E) a credit union's failure to take timely
remedial action with respect to the specific violation
may result in the issuance of an order assessing a
civil penalty up to the following maximum amount,
based upon the total assets of the credit union:

(i) Credit unions with assets of less than \$10
million..... \$1,000

21 (ii) Credit unions with assets of at least \$10
22 million and less than \$50 million ..... \$2,500
23 (iii) Credit unions with assets of at least
24 \$50 million and less than \$100 million .... \$5,000

25(iv) Credit unions with assets of at least26\$100 million and less than \$500 million .. \$10,000

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(v) Credit unions with assets of at least \$500 1 2 million and less than \$1 billion ..... \$25,000 (vi) Credit unions with assets of \$1 billion 3 and greater ..... \$50,000; and 4 5 (F) an order assessing a civil penalty under this 6 item (6) shall take effect upon service of the order, 7 unless the credit union makes a written request for a hearing under 38 IL. Adm. Code 190.20 of the 8 9 Department's rules for credit unions within 90 days 10 after issuance of the order; in that event, the order 11 shall be stayed until a final administrative order is 12 entered.

13This item (6) shall not apply to violations separately14addressed in rules as authorized under item (7) of this15Section.

16 (7) Except for the fees established in this Act, to 17 prescribe, by rule and regulation, fees and penalties for preparing, approving, and filing reports and other 18 19 documents; furnishing transcripts; holding hearings; 20 investigating applications for permission to organize, merge, or convert; failure to maintain accurate books and 21 22 records to enable the Department to conduct an 23 examination; and taking supervisory actions.

(8) To destroy, in his discretion, any or all books
and records of any credit union in his possession or under
his control after the expiration of three years from the

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date of cancellation of the charter of such credit unions.

(9) To make investigations and to conduct research and
studies and to publish some of the problems of persons in
obtaining credit at reasonable rates of interest and of
the methods and benefits of cooperative saving and lending
for such persons.

7 (10) To authorize, foster or establish experimental,
8 developmental, demonstration or pilot projects by public
9 or private organizations including credit unions which:

10 (a) promote more effective operation of credit 11 unions so as to provide members an opportunity to use 12 and control their own money to improve their economic 13 and social conditions; or

(b) are in the best interests of credit unions,
their members and the people of the State of Illinois.

16 (11) To cooperate in studies, training or other 17 administrative activities with, but not limited to, the 18 NCUA, other state credit union regulatory agencies and 19 industry trade associations in order to promote more 20 effective and efficient supervision of Illinois chartered 21 credit unions.

(12) Notwithstanding the provisions of this Section,the Secretary shall not:

(1) issue an order against a credit union
 organized under this Act for unsafe or unsound banking
 practices solely because the entity provides or has

provided financial services to a cannabis-related legitimate business;

3 (2) prohibit, penalize, or otherwise discourage a
4 credit union from providing financial services to a
5 cannabis-related legitimate business solely because
6 the entity provides or has provided financial services
7 to a cannabis-related legitimate business;

8 (3) recommend, incentivize, or encourage a credit 9 union not to offer financial services to an account 10 holder or to downgrade or cancel the financial 11 services offered to an account holder solely because:

12 (A) the account holder is a manufacturer or
13 producer, or is the owner, operator, or employee
14 of a cannabis-related legitimate business;

(B) the account holder later becomes an owner
or operator of a cannabis-related legitimate
business; or

(C) the credit union was not aware that the
account holder is the owner or operator of a
cannabis-related legitimate business; and

(4) take any adverse or corrective supervisory
 action on a loan made to an owner or operator of:

(A) a cannabis-related legitimate business
solely because the owner or operator owns or
operates a cannabis-related legitimate business;
or

1	(B) real estate or equipment that is leased to
2	a cannabis-related legitimate business solely
3	because the owner or operator of the real estate
4	or equipment leased the equipment or real estate
5	to a cannabis-related legitimate business.
6	(Source: P.A. 101-27, eff. 6-25-19.)

7 (205 ILCS 305/9) (from Ch. 17, par. 4410)

8 Sec. 9. Reports and examinations.

9 (1) Credit unions shall report to the Department on forms 10 supplied by the Department, in accordance with a schedule 11 published by the Department. A recapitulation of the annual 12 reports shall be compiled and published annually by the 13 Department, for the use of the General Assembly, credit 14 unions, various educational institutions and other interested 15 parties. A credit union which fails to file any report when due 16 shall pay to the Department a late filing fee for each day the 17 report is overdue as prescribed by rule. The Secretary may extend the time for filing a report. 18

(2) The Secretary may require special examinations of and 19 20 special financial reports from a credit union or a credit 21 union organization in which a credit union loans, invests, or duties 22 substantially all managerial delegates and responsibilities when he determines that such examinations and 23 reports are necessary to enable the Department to determine 24 25 the safety of a credit union's operation or its solvency. The

cost to the Department of the aforesaid special examinations
 shall be borne by the credit union being examined as
 prescribed by rule.

(3) All credit unions incorporated under this Act shall be 4 5 examined at least biennially by the Department or, at the discretion of the Secretary, by a public accountant registered 6 by the Department of Financial and Professional Regulation. 7 8 The costs of an examination shall be paid by the credit union. 9 The scope of all examinations by a public accountant shall be 10 at least equal to the examinations made by the Department. The 11 examiners shall have full access to, and may compel the 12 production of, all the books, papers, securities and accounts 13 of any credit union. A special examination shall be made by the 14 Department or by a public accountant approved by the 15 Department upon written request of 5 or more members, who 16 guarantee the expense of the same. Any credit union refusing 17 to submit to an examination when ordered by the Department shall be reported to the Attorney General, who shall institute 18 proceedings to have its charter revoked. If the Secretary 19 20 determines that the examination of a credit union is to be 21 conducted by a public accountant registered by the Department 22 of Financial and Professional Regulation and the examination 23 done in conjunction with the credit union's external is independent audit of financial statements, the requirements of 24 25 this Section and subsection (3) of Section 34 shall be deemed 26 met.

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(3.5) Pursuant to Section 8, the Secretary shall adopt 1 2 rules that ensure consistency and due process in the 3 examination process. The Secretary may also establish quidelines that (i) define the scope of the examination 4 5 process and (ii) clarify examination items to be resolved. The 6 rules, formal quidance, interpretive letters, or opinions furnished to credit unions by the Secretary may be relied upon 7 8 by the credit unions.

9 (4) A copy of the completed report of examination and a 10 review comment letter, if any, citing exceptions revealed 11 during the examination, shall be submitted to the credit union 12 by the Department. A detailed report stating the corrective 13 actions taken by the board of directors on each exception set forth in the review comment letter shall be filed with the 14 15 Department within 40 days after the date of the review comment 16 letter, or as otherwise directed by the Department. Any credit 17 union through its officers, directors, committee members or employees, which willfully provides fraudulent or misleading 18 19 information regarding the corrective actions taken on 20 exceptions appearing in a review comment letter may have its operations restricted to the collection of principal and 21 22 interest on loans outstanding and the payment of normal 23 expenses and salaries until all exceptions are corrected and 24 accepted by the Department.

25 (5) Notwithstanding the biennial examination requirement
 26 of subsection (3), one or more credit unions may be examined

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1	less frequently upon the Secretary's written statement. The
2	Secretary's statement shall include the following:
3	(a) a finding that good cause exists;
4	(b) a finding that there is no reasonable expectation
5	that harm to members will result; and
6	(c) to the extent reasonable under the circumstances,
7	identification of the affected credit unions and the
8	expected frequency of examination.
9	A written statement made pursuant to this subsection may
10	be superseded by a subsequent statement made pursuant to this
11	subsection. The Secretary is not required to conduct
12	examinations that the Secretary would have been required to
13	conduct but for a written statement made pursuant to this
14	subsection. Nothing in this subsection shall be construed to
15	limit the Secretary's authority under this Act. The written
16	statement shall not be confidential supervisory information
17	except to the extent it names or permits the identification of
18	specific credit unions.
19	(6) The Secretary may accept an examination from the
20	National Credit Union Administration or a private insurer
21	instead of an examination conducted by the Department or by a
22	public accountant registered by the Department pursuant to
23	subsection (3).
24	(Source: P.A. 102-558, eff. 8-20-21.)

25 (205 ILCS 305/20) (from Ch. 17, par. 4421)

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Sec. 20. Election or appointment of officials.

2 (1) The credit union shall be directed by a board of 3 directors consisting of no less than 7 in number, to be elected at the annual meeting by and from the members. Directors shall 4 5 hold office until the next annual meeting, unless their terms are staggered. Upon amendment of its bylaws, a credit union 6 7 may divide the directors into 2 or 3 classes with each class as 8 nearly equal in number as possible. The term of office of the 9 directors of the first class shall expire at the first annual 10 meeting after their election, that of the second class shall 11 expire at the second annual meeting after their election, and 12 that of the third class, if any, shall expire at the third 13 annual meeting after their election. At each annual meeting after the classification, the number of directors equal to the 14 15 number of directors whose terms expire at the time of the 16 meeting shall be elected to hold office until the second 17 succeeding annual meeting if there are 2 classes or until the third succeeding annual meeting if there are 3 classes. A 18 director shall hold office for the term for which he or she is 19 20 elected and until his or her successor is elected and 21 qualified.

(1.5) Except as provided in subsection (1.10), in all elections for directors, every member has the right to vote, in person, by proxy, or by secure electronic record if approved by the board of directors, the number of shares owned by him, or in the case of a member other than a natural person,

the member's one vote, for as many persons as there are 1 2 directors to be elected, or to cumulate such shares, and give 3 one candidate as many votes as the number of directors multiplied by the number of his shares equals, or 4 to 5 distribute them on the same principle among as many candidates as he may desire and the directors shall not be elected in any 6 other manner. Shares held in a joint account owned by more than 7 8 one member may be voted by any one of the members, however, the 9 number of cumulative votes cast may not exceed a total equal to 10 the number of shares multiplied by the number of directors to 11 be elected. A majority of the shares entitled to vote shall be 12 represented either in person or by proxy for the election of 13 directors. Each director shall wholly take and subscribe to an oath that he will diligently and honestly perform his duties 14 in administering the affairs of the credit union, that while 15 16 may delegate to another the performance of those he 17 administrative duties he is not thereby relieved from his responsibility for their performance, that he will 18 not knowingly violate or permit to be violated any law applicable 19 20 to the credit union, and that he is the owner of at least one share of the credit union. 21

(1.10) Upon amendment of a credit union's bylaws approved by the members, in all elections for directors, every member who is a natural person shall have the right to cast one vote, regardless of the number of his or her shares, in person, by proxy, or by secure electronic record if approved by the board

1 of directors, for as many persons as there are directors to be 2 elected.

(1.15) If the board of directors has adopted a policy 3 addressing age eligibility standards on voting, holding 4 5 office, or petitioning the board, then a credit union may require (i) that members be at least 18 years of age by the 6 date of the meeting in order to vote at meetings of the 7 8 sign nominating petitions, or sign petitions members, 9 requesting special meetings, and (ii) that members be at least 10 18 years of age by the date of election or appointment in order 11 to hold elective or appointive office.

12 (2) The board of directors shall appoint from among the 13 members of the credit union, a supervisory committee of not 14 less than 3 members at the organization meeting and within 30 15 days following each annual meeting of the members for such 16 terms as the bylaws provide. Members of the supervisory 17 committee may, but need not be, on the board of directors, but shall not be officers of the credit union, members of the 18 19 credit committee, or the credit manager if no credit committee 20 has been appointed.

(3) The board of directors may appoint, from among the members of the credit union, a credit committee consisting of an odd number, not less than 3 for such terms as the bylaws provide. Members of the credit committee may, but need not be, directors or officers of the credit union, but shall not be members of the supervisory committee.

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(4) The board of directors may appoint from among the 1 2 members of the credit union a membership committee of one or 3 more persons. If appointed, the committee shall act upon all applications for membership and submit a report of its actions 4 5 to the board of directors at the next regular meeting for review. If no membership committee is appointed, credit union 6 7 management shall act upon all applications for membership and 8 submit a report of its actions to the board of directors at the 9 next regular meeting for review.

10 (5) As used in this Section, "electronic" and "electronic 11 record" have the meanings ascribed to those terms in the 12 Uniform Electronic Transactions Act. As used in this Section, 13 "secured electronic record" means an electronic record that 14 meets the criteria set forth in <u>the</u> Uniform Electronic 15 Transactions Act.

16 (Source: P.A. 102-38, eff. 6-25-21; revised 8-3-21.)

17 (205 ILCS 305/59) (from Ch. 17, par. 4460)

18 Sec. 59. Investment of funds.

(a) Funds not used in loans to members may be invested,
pursuant to subsection (7) of Section 30 of this Act, and
subject to Departmental rules and regulations:

(1) In securities, obligations or other instruments of
or issued by or fully guaranteed as to principal and
interest by the United States of America or any agency
thereof or in any trust or trusts established for

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investing directly or collectively in the same;

(2) In obligations of any state of the United States, 2 3 the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any 4 5 political subdivision thereof; however, a credit union may not invest more than 10% of its unimpaired capital and 6 7 surplus in the obligations of one issuer, exclusive of 8 general obligations of the issuer, and investments in 9 municipal securities must be limited to securities rated 10 in one of the 4 highest rating investment grades 11 eategories by a nationally recognized statistical rating 12 organization;

13 In certificates of deposit or passbook type (3) 14 accounts issued by a state or national bank, mutual 15 savings bank or savings and loan association; provided 16 that such institutions have their accounts insured by the 17 Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; but provided, 18 19 further, that a credit union's investment in an account in 20 any one institution may exceed the insured limit on 21 accounts;

(4) In shares, classes of shares or share certificates
of other credit unions, including, but not limited to
corporate credit unions; provided that such credit unions
have their members' accounts insured by the NCUA or other
approved insurers, and that if the members' accounts are

so insured, a credit union's investment may exceed the insured limit on accounts;

3 (5) In shares of a cooperative society organized under 4 the laws of this State or the laws of the United States in 5 the total amount not exceeding 10% of the unimpaired 6 capital and surplus of the credit union; provided that 7 such investment shall first be approved by the Department;

8 (6) In obligations of the State of Israel, or 9 obligations fully guaranteed by the State of Israel as to 10 payment of principal and interest;

11 (7) In shares, stocks or obligations of other 12 financial institutions in the total amount not exceeding 13 5% of the unimpaired capital and surplus of the credit 14 union;

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(8) In federal funds and bankers' acceptances;

16 (9) In shares or stocks of Credit Union Service 17 Organizations in the total amount not exceeding the 18 greater of 6% of the unimpaired capital and surplus of the 19 credit union or the amount authorized for federal credit 20 unions;

(10) In corporate bonds identified as investment grade
by at least one nationally recognized statistical rating
organization, provided that:

(i) the board of directors has established a
 written policy that addresses corporate bond
 investment procedures and how the credit union will

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manage credit risk, interest rate risk, liquidity
risk, and concentration risk; and

(ii) 3 the credit union has documented in its records that a credit analysis of a particular 4 5 investment and the issuing entity was conducted by the 6 credit union, a third party on behalf of the credit 7 union qualified by education or experience to assess the risk characteristics of corporate bonds, or a 8 9 nationally recognized statistical rating agency before 10 purchasing the investment and the analysis is updated 11 least annually for as long as it holds the at 12 investment;

(11) To aid in the credit union's management of its 13 14 assets, liabilities, and liquidity in the purchase of an 15 investment interest in a pool of loans, in whole or in part 16 and without regard to the membership of the borrowers, 17 from other depository institutions and financial type institutions, including mortgage banks, finance companies, 18 19 insurance companies, and other loan sellers, subject to 20 such safety and soundness standards, limitations, and 21 qualifications as the Department may establish by rule or 22 guidance from time to time;

(12) To aid in the credit union's management of its
assets, liabilities, and liquidity by receiving funds from
another financial institution as evidenced by certificates
of deposit, share certificates, or other classes of shares

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issued by the credit union to the financial institution;

2 (13) In the purchase and assumption of assets held by 3 other financial institutions, with approval of the Secretary and subject to any safety and soundness 4 5 standards, limitations, and qualifications as the Department may establish by rule or guidance from time to 6 7 time; and

8 (14)the shares, stocks, or obligations In of 9 community development financial institutions as defined in 10 regulations issued by the U.S. Department of the Treasury 11 and minority depository institutions as defined by the 12 National Credit Union Administration; however the aggregate amount of all such investments shall not at any 13 14 time exceed 5% of the paid-in and unimpaired capital and 15 surplus of the credit union.

16 (b) As used in this Section:

17 "Political subdivision" includes, but is not limited to, counties, townships, cities, villages, incorporated towns, 18 19 school districts, educational service regions, special road 20 districts, public water supply districts, fire protection 21 districts, drainage districts, levee districts, sewer 22 districts, housing authorities, park districts, and any 23 agency, corporation, or instrumentality of a state or its political subdivisions, whether now or hereafter created and 24 25 whether herein specifically mentioned or not.

26 "Financial institution" includes any bank, savings bank,

1 savings and loan association, or credit union established 2 under the laws of the United States, this State, or any other 3 state.

(c) A credit union investing to fund an employee benefit 4 5 plan obligation is not subject to the investment limitations of this Act and this Section and may purchase an investment 6 7 that would otherwise be impermissible if the investment is directly related to the credit union's obligation under the 8 9 employee benefit plan and the credit union holds the 10 investment only for so long as it has an actual or potential 11 obligation under the employee benefit plan.

12 (d) If a credit union acquires loans from another 13 financial institution or financial-type institution pursuant 14 to this Section, the credit union shall be authorized to 15 provide loan servicing and collection services in connection 16 with those loans.

17 (Source: P.A. 101-567, eff. 8-23-19; 102-496, eff. 8-20-21.)

Section 99. Effective date. This Act takes effect upon becoming law.