

2016 Bill 32

Second Session, 29th Legislature, 65 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 32

CREDIT UNION AMENDMENT ACT, 2016

THE PRESIDENT OF TREASURY BOARD, MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 32

2016

CREDIT UNION AMENDMENT ACT, 2016

(Assented to _____, 2016)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cC-32

1 The *Credit Union Act* is amended by this Act.

2 Section 26 is amended

(a) by repealing subsection (1) and substituting the following:

Purposes and mode of operation

26(1) The purposes of a credit union are to provide financial services on a co-operative basis, subject to the restrictions set out in this Act and the regulations,

- (a) for its members, and
- (b) for non-members, with loans to and deposits from non-members being restricted to what is prescribed as allowed,

and its principal purposes are to receive deposits from, and to make loans to, its members.

(b) by repealing subsection (2)(c) and (d) and substituting the following:

Explanatory Notes

1 Amends chapter C-32 of the Revised Statutes of Alberta 2000.

2 Section 26 presently reads in part:

26(1) The purposes of a credit union are, subject to the restrictions set out in this Act and the regulations, to provide on a co-operative basis financial services wholly or primarily for its members, and its principal purposes are to receive deposits from, and to make loans to, its members.

(2) A credit union shall operate on a co-operative basis such that

(c) membership in it is

(i) voluntary, and

(ii) open to individuals resident in Alberta, except to the extent that, in the case of a credit union with a bond of association, it is restricted by that bond,

(d) its business is carried on wholly or primarily for the benefit of its members, and

- (c) membership in it is voluntary, and

3 Section 37 is amended by adding the following after subsection (6):

(6.1) The Lieutenant Governor in Council may make regulations establishing rights on the part of members where a bylaw under section 45(4)(j) does not provide for access or reasonable access to the list of members as referred to in subsection (3).

4 Section 46 is amended

(a) by repealing subsection (3)(a) and substituting the following:

- (a) except as prescribed, the businesses of taking deposits and lending money and any other businesses that are incidental to such deposit-taking and loan-making businesses,

(b) in subsection (4)(b)(iii) by striking out “, limited to the class of life insurance under that Act”;

(c) by adding the following after subsection (6.1):

(6.2) A credit union whose subsidiary or affiliate carries on the business of an insurance agent shall ensure that that business, the premises where or from which that business is conducted and the communication systems used by or in that business are, viewed from the standpoint of a reasonable customer of that business and of the businesses of the credit union, kept entirely separate and distinct from all businesses carried on by the credit union, all premises of the credit union itself and all communication systems used by or in the credit union’s businesses.

(6.3) For the purposes of subsection (6.2),

- (a) references to communication systems used by or in a business include any signs and writing shown or used by anyone in the business that are or may be seen by any customer of that business, and

3 Addition of regulation-making power to provide for where there is no bylaw allowing reasonable access to membership list.

4 Separation of businesses, premises and communication systems of credit unions and of subsidiaries and affiliates that act as insurance agents. Also, section 46(3) and (4) presently read in part:

(3) A credit union may carry on

(a) except as prescribed, any business that is entailed in the fulfilment of any of the purposes of a credit union,

(4) Subject to any prescribed terms and conditions and any other law, a subsidiary or affiliate may carry on

(b) the business of

(i) a corporation within the meaning of the Loan and Trust Corporations Act or within the meaning ascribed to any equivalent expression by any equivalent statute of another province or territory or of Canada,

(ii) a securities dealer, or

(iii) an insurance agent, within the meaning of the Insurance Act, limited to the class of life insurance under that Act,

- (b) the Lieutenant Governor in Council may prescribe what is required for businesses, premises and communication systems to be regarded as entirely separate and distinct.

5 Section 48 is repealed.

6 Section 56(1)(c)(i) is amended by striking out “10” and substituting “50”.

7 Section 59(1) is repealed and the following is substituted:

Quorum

59(1) Subject to this section, the quorum at a general meeting is

- (a) 50 members if the credit union has assets of less than \$500 000 000, and
- (b) 100 members if it has assets of or exceeding \$500 000 000.

(1.1) Where a vote is to be held on a special resolution, the quorum for that vote is

5 Section 48 presently reads:

48 A credit union shall report

- (a) the establishment of a branch of its business,*
- (b) the relocation of any of its branches, or*
- (c) the establishment of an automated banking machine*

in writing to the Corporation forthwith after the decision to that effect has been made by its board.

6 Section 56(1) presently reads in part:

56(1) The board may at any time call a special general meeting of the credit union, and shall do so on receiving a written request to that effect signed

- (c) in the case of a small credit union, by at least the greater of*
 - (i) 10 members, and*
 - (ii) 10% of that membership.*

7 Section 59(1) presently reads:

59(1) Subject to subsection (4), the quorum at a general meeting is the lesser of

- (a) 50 members, and*
- (b) 10% of the number of members entitled to vote at that meeting, with a minimum of 10,*

or such higher number or percentage or combination of number and percentage as is specified in the credit union's bylaws.

- (a) 75 members if the credit union has assets of less than \$500 000 000, and
- (b) 150 members if it has assets of or exceeding \$500 000 000.

(1.2) Notwithstanding subsections (1) and (1.1), the bylaws may increase the number of members required for a quorum over the numbers respectively specified in those subsections.

8 Section 61 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding anything in this section, membership of a credit union is limited to

- (a) individuals who are resident in Alberta and, in the case of a credit union with a bond of association, who fall within the membership limitations imposed by the bond,
- (b) individuals who were members before ceasing to be resident in Alberta and who have, without any break, maintained their membership in that credit union,
- (c) persons who are members by virtue of amalgamations or arrangements or having rights or obligations referred to in section 1(1)(ii), and
- (d) except as prescribed by the Minister, other entities, not being individuals, that have their headquarters or that have material business interests in Alberta,

and who otherwise qualify as members of it.

(b) by repealing subsection (4).

9 Section 83 is amended

(a) in subsection (3) by adding the following after clause (a):

- (a.01) in the case of a credit union whose assets exceed 2.5% of the aggregate assets of all credit unions, the prescribed

8 Section 61 presently reads in part:

61(1) A person is not qualified to be or to remain a member unless the person holds at least the minimum number of common shares issued by the credit union that is required by the bylaws.

(4) The membership of a credit union must consist wholly or substantially of individuals.

9 Section 83(3) and (4) presently read in part:

(3) The annual financial statements must show, as notations to them,

information about the remuneration and benefits, within the prescribed meanings, of the 5 most highly compensated executive managers of and as between that credit union and its subsidiaries,

(b) by repealing subsection (4) and substituting the following:

(4) At least at every 5th annual general meeting, the board of a credit union other than one specified in subsection (3)(a.01) shall place before its members a resolution in the prescribed form respecting the disclosure of the prescribed information about the remuneration and benefits, within the prescribed meanings, of the prescribed executive managers of that credit union and its subsidiaries.

10 Section 107(7)(b) is repealed and the following is substituted:

- (b) another person where the shares are to be held under a registered retirement savings plan, a registered retirement income fund or a tax-free savings account that is registered under the *Income Tax Act* (Canada) or the regulations under it and of which a member is the annuitant or is otherwise entitled to the benefit.

11 Section 117(3) is amended by striking out “and” at the end of clause (e), by adding “and” at the end of clause (f) and by adding the following after clause (f):

- (g) the signature card or signing authority.

12 Section 157 is amended

- (a) in clause (a) by adding “by the Minister” after “prescribed”;**
- (b) in clause (b) by striking out “prescribed corporations” and substituting “corporations prescribed by the Minister”.**

(a) separately in respect of each corporation, the aggregate amount provided during the previous fiscal year to all the directors, and all the officers who are not employees, of the credit union and its subsidiaries

(i) as remuneration, and

(ii) separately, as reimbursement or allowance for expenses incurred on the business and affairs of the credit union and its subsidiaries,

(4) At least at every 5th annual general meeting, the board of a credit union shall place before its members a resolution in the prescribed form respecting the disclosure of the remuneration of the credit union's executive managers.

10 Section 107(7) presently reads:

(7) A credit union shall not issue common shares to any person other than

(a) a member, or

(b) another person where the shares are to be held under a registered retirement savings plan or a registered retirement income fund of which a member is the annuitant.

11 Additional requirement as to what a credit union has to maintain a record of (signature card or signing authority), in relation to each large unclaimed balance transferred to the credit union's unclaimed balances account.

12 Section 157 presently reads:

157 Central consists of the following members:

(a) all credit unions, except those that are prescribed not to be members of it, and

13 Section 158(3) is amended by adding “by the Minister” after “corporations prescribed”.

14 Section 163 is amended by adding the following after subsection (5):

(5.1) At least 2 of the directors must be individuals who are not parties related to credit unions that are members of Central.

15 Section 168(3) is repealed and the following is substituted:

- (3)** Central or its subsidiary may make deposits with
- (a) the Credit Union Central of Canada,
 - (b) the Bank of Canada,
 - (c) any entity whose sole or primary business is the clearing or settlement of payments and that takes those deposits only for the purpose of facilitating the clearing or settling of payments from Alberta credit unions, or
 - (d) any or all of the entities referred to in clauses (a) to (c).

16 The following is added after section 175:

Expenses incurred in administering and enforcing the legislation

175.01 The Minister may charge Central the expenses directly or indirectly incurred by the Government for or in connection with the administration and enforcement of this Act and the regulations, as they relate to Central.

(b) those prescribed corporations that are admitted to membership by Central, and are not removed from membership by Central, pursuant to its bylaws.

13 Section 158(3) presently reads:

(3) Central's purposes, as they relate to corporations prescribed with reference to section 157(b), are those prescribed.

14 Addition of requirement that at least 2 directors on Central's board of directors must be independent of credit unions with Central membership.

15 Section 168(3) presently reads:

(3) Central or its subsidiary may make deposits with the Credit Union Central of Canada and the Bank of Canada.

16 Addition of provision enabling charging of expenses related to the regulation of Central by the Government.

17 Section 208 is repealed and the following is substituted:

Interpretation

208(1) In this Part,

- (a) “adjudication” means a finding, with reasons, made or to be made under section 216.1(3) and includes the remedial steps, if any, referred to in that subsection and, where applicable, includes any particular portion of that overall finding;
- (b) “adjudicator” means the individuals prescribed by the Minister who make an adjudication;
- (c) “decision” means an action of the Minister or the Corporation referred to in section 210(6) or 211(1), an adjudication or a decision made by a review board under section 212 on a review or any determination to be made by the Minister or the Corporation that falls within the scope of section 209(1) or made on an adjudication;
- (d) “party” means the credit union or Central or, where the decision is one referred to in
 - (i) section 211(1)(a), the person designated or to be designated,
 - (ii) section 211(1)(b), the incorporators,
 - (iii) section 211(1)(e), so far as it relates to the application of section 99(1) or (2) or 105(1) to a subsidiary of a credit union, that subsidiary, or
 - (iv) section 211(1)(l) or (l.1) involving a subsidiary, that subsidiary and its holding body corporate, or either of them,

whose rights are or are liable to be directly and adversely affected by a decision and, where a review board has reviewed a decision of the Minister or the Corporation, includes the Minister or the Corporation, as the case may be.

17 Enabling a subsidiary of Central to be a party to an oppression, etc., complaint under section 216.1 (post). Section 208 presently reads:

208 In this Part,

- (a) “decision” means an action of the Minister or the Corporation referred to in section 210(6) or 211(1) or a decision made by a review board under section 212 on a review or any determination to be made by the Minister or the Corporation that falls within the scope of section 209(1);*
- (b) “party” means the credit union or Central or, where the decision is one referred to in
 - (i) section 211(1)(a), the person designated or to be designated,*
 - (ii) section 211(1)(b), the incorporators,*
 - (iii) section 211(1)(e), so far as it relates to the application of section 99(1) or (2) or 105(1) to a subsidiary of a credit union, that subsidiary, or*
 - (iv) section 211(1)(l) involving a subsidiary, that subsidiary and its holding body corporate, or either of them,**

whose rights are or are liable to be directly and adversely affected by a decision and, where a review board has reviewed a decision of the Minister or the Corporation, includes the Minister or the Corporation, as the case may be.

(2) The Minister has the right to intervene in any proceeding under this Part that follows and derives from an adjudication and, if the proceeding is before a court, on such terms as the court allows.

18 Section 211(1) is amended by adding the following after clause (l):

(l.1) the making of an adjudication,

19 Section 212 is amended

- (a) **in subsection (1) by adding** “or the copy referred to in section 216.1(4), as the case may be” **after** “211(2)”;
- (b) **in subsection (2) by striking out** “, decides within that period to reverse the” **and substituting** “and if applicable, decides within that period to reverse its”;
- (c) **by repealing subsection (9) and substituting the following:**
 - (9) Decisions made by review boards on decisions by the Minister or the Corporation are binding on the Minister or the Corporation, as the case may be.

20 Section 216(2) is amended by adding “, (l.1)” before “or, if”.

18 Enabling an oppression, etc., complaint under section 216.1 (post) to be reviewable by a review board. Section 211(1) presently reads in part:

211(1) A party who feels aggrieved by

(l) the making of a cease and desist order under section 218, is entitled to have the decision reviewed by a review board under section 212.

19 Section 212 presently reads in part:

212(1) A party affected by a decision referred to in section 211(1) may object to the decision by serving on the Minister a notice of objection, specifying the decision objected to and the grounds for the objection, within 90 days after being served with the statement pursuant to section 211(2).

(2) The Minister shall, within 30 days after being served with the notice of objection and unless the Minister or the Corporation, as the case may be, decides within that period to reverse the decision without resort to further proceedings under this Part, appoint a review board to conduct a review of the matter objected to.

(9) Decisions of review boards are binding on the Minister and the Corporation.

20 Section 216(2) presently reads:

(2) The review board or the Court, as the case may be, may grant a stay in respect of a decision referred to in section 211(1)(a), (f), (j), (l) or, if the decision corresponds to a decision referred to in any of those clauses, (k) or any other prescribed decision.

21 The following is added after section 216:

Relief on the ground of oppression, unfairness, etc.

216.1(1) A credit union that considers that it has been adversely affected by an act or a failure to act on the part of Central or its subsidiary that falls within section 218(1)(a) to (d) may in writing apply to Central for the making by an adjudicator of an adjudication as to whether the credit union has or has not been so affected.

(2) Where an application is made under subsection (1), Central and the applicant credit union shall follow the dispute resolution process prescribed by the Minister unless the application has previously been withdrawn in writing.

(3) Pursuant to the dispute resolution process established under subsection (2), the adjudicator shall review the application and make a written finding that the complaint made in the application is or is not justified, with reasons, and, if that complaint is found to be justified, setting out the steps, if any, to be taken by Central to remedy the situation underlying the complaint, including, if applicable, steps to be taken by Central to ensure an appropriate remedy on the part of its subsidiary.

(4) After making the adjudication, the adjudicator shall send a copy of it to Central, the applicant credit union, the Minister and, if applicable, the subsidiary.

(5) The Minister shall make regulations respecting the processes and procedures to be adopted by the adjudicator, and may make regulations respecting its powers and duties, including any specific duties of procedural fairness, and costs in respect of it.

22 Section 218(1) is amended by striking out “or” at the end of clause (c), by adding “or” at the end of clause (d) and by adding the following after clause (d):

- (e) might reasonably be expected to result in a situation that would have a material adverse effect on the interests of the Government,

21 Addition of provisions providing for remedies in the case of oppression, unfairness, etc., by Central against credit unions and related provisions.

22 Adding Ministerial power to make a cease and desist order where an act or omission is held to have a material adverse effect on Government interests. Section 218(1) presently reads:

218(1) Where the Minister considers that a credit union or Central or its subsidiary is doing or is about to do something or is failing to do something and that the act or failure to act

(a) is or would be in contravention of this Act or the regulations,

23(1) Where a loan was lawfully made to, or a deposit was lawfully taken from, a non-member before the commencement of section 2(a) and that loan or deposit would thereafter fall outside a restriction imposed by section 26(1)(b) of the *Credit Union Act*, as added by section 2(a), that loan or deposit may continue after that commencement on the same terms and conditions that existed immediately prior to that commencement, and that continuance would not cause the loan or deposit to fall outside the purposes of the credit union.

(2) The 4-year period referred to in section 37(6.2)(c) of the *Credit Union Act*, as added by section 3, may be before or after, or partly before and partly after, the commencement of section 3.

(3) Where a general meeting was duly and lawfully called before June 1, 2017, then, notwithstanding section 59(1) to (1.2) of the *Credit Union Act*, as added by section 7, the quorums for the meeting and for a special resolution are to be those resulting from the application of Division 1 of Part 5 of the *Credit Union Act* as it read at the end of May 2017.

- (b) *is or would be inconsistent with*
- (i) *in the case of a credit union or its subsidiary, the purposes of a credit union or generally with the mode of operation set out in section 26(2), or*
 - (ii) *in the case of Central or its subsidiary, the purposes of Central,*
- (c) *might reasonably be expected to result in a situation that would be in contravention of this Act or the regulations or inconsistent with the purposes or mode of operation referred to in clause (b), or*
- (d) *constitutes or would constitute a practice that might adversely affect the interests of members, customers or creditors of the credit union or Central,*

the Minister may order that body corporate to, or order the body corporate to procure its subsidiary to, cease or refrain from doing or to do that thing, as the case may be, in order to remedy that situation.

23 Addition of transitional and savings provisions related to sections 2, 3, 7 and 8 of this amending Act.

(4) Notwithstanding section 8(a), where a person was a member of a credit union immediately before the Bill to enact the *Credit Union Amendment Act, 2016* received first reading but would not qualify as a member under section 61(1.1) of the *Credit Union Act*, as added by section 8(a), the credit union may allow that person to be and remain a member unless the Minister by regulation prescribes that person to be excluded from such continuing membership.

24(1) The following provisions come into force on Proclamation:

section 2(a);
section 4;
section 12;
section 13;
section 17;
section 18;
section 19;
section 20;
section 21;
section 22.

(2) Sections 6 and 7 come into force on June 1, 2017.

(3) Section 9 comes into force on January 1, 2018.

(4) Section 14 comes into force on January 1, 2019.

24 Commencement provisions, rendering some provisions to come into force on Proclamation and at future times. (The remaining provisions come into force at the beginning of the day on which Assent is given.)

