

[First Reprint]

ASSEMBLY, No. 1597

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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SYNOPSIS

Authorizes credit unions to serve as depositories of public funds; requires credit unions to provide certain funds for financial literacy education.

CURRENT VERSION OF TEXT

As reported by the Assembly Financial Institutions and Insurance Committee on June 16, 2011, with amendments.

(Sponsorship Updated As Of: 6/14/2011)

1 AN ACT authorizing credit unions to serve as public depositories
 2 and amending ¹and supplementing¹ P.L.1970, c.236 and
 3 ¹amending¹ P.L.1984, c.171.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read
 9 as follows:

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

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

13 ¹"Adequately capitalized" means, with respect to a public
 14 depository, "adequately capitalized" as the term is defined in
 15 subsection (b) of section 38 of the "Federal Deposit Insurance Act,"
 16 Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section
 17 216 of title II of the "Federal Credit Union Act," Pub.L.73-467
 18 (12 U.S.C. s.1790d(c)), as applicable, and their implementing
 19 regulations;¹

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

22 "Capital funds" means (a) in the case of a State bank or national
 23 bank or capital stock savings bank, the aggregate of the capital
 24 stock, surplus and undivided profits of the bank or savings bank; (b)
 25 in the case of a mutual savings bank, the aggregate of the capital
 26 deposits, if any, and the surplus of the savings bank; **[and]** (c) in
 27 the case of an association, the aggregate of all reserves required by
 28 any law or regulation, and the undivided profits, if any, of the
 29 association; and (d) in the case of a credit union, the aggregate of
 30 all reserves required by any law or regulation, and the capital
 31 deposits of the credit union;

32 "Commissioner" means the Commissioner of Banking and
 33 Insurance;

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

36 ¹"Critically undercapitalized" means, with respect to a public
 37 depository, "critically undercapitalized" as the term is defined in
 38 subsection (b) of section 38 of the "Federal Deposit Insurance Act,"
 39 Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section
 40 216 of title II of the "Federal Credit Union Act," Pub.L.73-467
 41 (12 U.S.C. s.1790d(c)), as applicable, and their implementing
 42 regulations;¹

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted June 16, 2011.

1 "Defaulting depository" means a public depository as to which
2 an event of default has occurred;
3 "Eligible collateral" means:
4 (a) Obligations of any of the following:
5 (1) The United States;
6 (2) Any agency or instrumentality of the United States,
7 including, but not limited to, the Student Loan Marketing
8 Association, the Government National Mortgage Association, the
9 Federal Home Loan Mortgage Corporation, the Federal National
10 Mortgage Association, the Federal Housing Administration and the
11 Small Business Administration;
12 (3) The State of New Jersey or any of its political subdivisions;
13 (4) Any other governmental unit; or
14 (b) Obligations guaranteed or insured by any of the following,
15 to the extent of that insurance or guaranty:
16 (1) The United States;
17 (2) Any agency or instrumentality of the United States,
18 including, but not limited to, the Student Loan Marketing
19 Association, the Government National Mortgage Association, the
20 Federal Home Loan Mortgage Corporation, the Federal National
21 Mortgage Association, the Federal Housing Administration and the
22 Small Business Administration;
23 (3) The State of New Jersey or any of its political subdivisions;
24 or
25 (c) Obligations now or hereafter authorized by law as security
26 for public deposits;
27 (d) Obligations in which the State, political subdivisions of the
28 State, their officers, boards, commissions, departments and agencies
29 may invest pursuant to an express authorization under any law
30 authorizing the issuance of those obligations;
31 (e) Obligations, letters of credit, or other securities or evidence
32 of indebtedness constituting the direct and general obligation of a
33 federal home loan bank or federal reserve bank; or
34 (f) Any other obligations as may be approved by the
35 commissioner by regulation or by specific approval;
36 "Event of default" means issuance of an order of a supervisory
37 authority or of a receiver restraining a public depository from
38 making payments of deposit liabilities;
39 "Governmental unit" means any county, municipality, school
40 district or any public body corporate and politic created or
41 established under any law of this State by or on behalf of any one or
42 more counties or municipalities, or any board, commission,
43 department or agency of any of the foregoing having custody of
44 funds;
45 "Maximum liability" of a public depository means, with respect
46 to any event of default, a sum equal to ¹~~5%~~ 4%¹ of the average
47 daily balance of collected public funds held on deposit by the

1 depository during the ¹~~["six-month"]~~ three-month¹ period ending on
2 the last day of the month ¹~~["next"]~~ immediately¹ preceding the
3 occurrence of ¹~~["such"]~~ the¹ event of default ¹~~that exceed the amount~~
4 of such public fund deposits that are insured by the Federal Deposit
5 Insurance Corporation, the National Credit Union Share Insurance
6 Fund, or by any other agency of the United States which insures
7 deposits made in public depositories¹;

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

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

14 "Public depository" means a State or federally chartered bank,
15 savings bank, credit union, or an association located in this State or
16 a state or federally chartered bank, savings bank, credit union, or
17 an association located in another state with a branch office in
18 this State, the deposits of which are insured by the Federal
19 Deposit Insurance Corporation or the National Credit Union
20 ¹~~["Administration"]~~ Share Insurance Fund¹ and which receives or
21 holds public funds on deposit;

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

25 ¹"Significantly undercapitalized" means, with respect to a public
26 depository, "significantly undercapitalized" as the term is defined in
27 subsection (b) of section 38 of the "Federal Deposit Insurance Act,"
28 Pub.L.81-797 (12 U.S.C. s.1831o(b)), or subsection (c) of section
29 216 of title II of the "Federal Credit Union Act," Pub.L.73-467
30 (12 U.S.C. s.1790d(c)), as applicable, and their implementing
31 regulations;

32 "Undercapitalized" means, with respect to a public depository,
33 "undercapitalized" as the term is defined in subsection (b) of section
34 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C.
35 s.1831o(b)), or subsection (c) of section 216 of title II of the
36 "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)),
37 as applicable, and their implementing regulations;¹

38 "Valuation date" means ¹March 31, June 30, September 30, and¹
39 December 31 ¹~~["and June 30"]~~;

40 "Well capitalized" means, with respect to a public depository,
41 "well capitalized" as the term is defined in subsection (b) of section
42 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C.
43 s.1831o(b)), or subsection (c) of section 216 of title II of the
44 "Federal Credit Union Act," Pub.L.73-467 (12 U.S.C. s.1790d(c)),
45 as applicable, and their implementing regulations¹.

46 (cf: P.L.2009, c.326, s.1)

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

3 4. a. ¹~~【Every public depository having public funds on deposit~~
4 therein shall, as security for such deposits, maintain eligible
5 collateral having a market value at least equal to either (1) 5% of
6 the average daily balance of collected public funds on deposit
7 during the 6-month period ending on the next preceding valuation
8 date, or (2), at the election of the depository, at least equal to 5%
9 of the average balance of collected public funds on deposit on the
10 first, eighth, fifteenth and twenty-second days of each month in the
11 6-month period ending on the next preceding valuation date, but
12 no¹ ~~】~~ (1) No¹ public depository¹, notwithstanding the collateral
13 requirements set forth under section 3 of P.L.2009, c.326 (C.17:9-
14 43.1),¹ shall be required to maintain any eligible collateral pursuant
15 to this act as security for any deposit or deposits of any
16 governmental unit to the extent that such deposit or deposits are
17 insured by the Federal Deposit Insurance Corporation ~~【or】~~ ¹~~【, the~~
18 ~~Federal Savings and Loan Insurance Corporation】¹, the National~~
19 Credit Union¹【Administration】 Share Insurance Fund¹, or by any
20 other agency of the United States which insures deposits made in
21 public depositories.

22 ¹(2)¹ In the case of any public depository which has not held
23 public funds on deposit for all of ¹~~【such 6-month】~~ a three-month¹
24 period ¹as measured pursuant to the provisions of section 3 of
25 P.L.2009, c.326 (C.17:9-43.1)¹, the commissioner shall ¹,
26 notwithstanding the provisions of that section,¹ prescribe the
27 amount of eligible collateral required to be maintained.

28 ¹(3)¹ Depositories shall have the right to make substitutions of
29 eligible collateral at any time. The income from eligible collateral
30 shall belong to the public depository without restriction.

31 b. ¹~~【No public depository shall at any time receive and hold on~~
32 deposit for any period in excess of 15 days public funds of a
33 governmental unit or governmental units which, in the aggregate,
34 exceed 75% of the capital funds of the depository, unless such
35 depository shall, in addition to the security required to be
36 maintained under paragraph a. of this section, secure such by
37 eligible collateral with a market value at least equal to 100% of
38 such excess.¹ ~~】 (Deleted by amendment, P.L.2009, c.326)¹~~

39 c. All collateral required to be maintained shall be deposited
40 with ¹~~【the】~~ any¹ Federal Reserve Bank¹【of New York, the Federal
41 Reserve Bank of Philadelphia, the】 or¹ Federal Home Loan Bank
42 ¹【of New York, as the case may be】¹, or ¹【with】¹ any other
43 banking institution located in this State or a contiguous state
44 ¹【which is a member of the Federal Reserve System】 as authorized
45 by regulation of the commissioner,¹ and ¹which¹ has capital funds
46 of not less than \$25,000,000.00. Notwithstanding the foregoing, the

1 commissioner may authorize public depositories to hold and
2 maintain the required collateral in such a manner as he deems
3 consistent with the purposes of this act.

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

8 (cf: P.L.2009, c.326, s.4)

9

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

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

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

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

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

26 d. He shall ascertain the amount derived or to be derived from
27 the liquidation of the collateral maintained by the defaulting
28 depository pursuant to section 4 of this act, and shall distribute such
29 proceeds pro rata among the governmental units affected to the
30 extent necessary to satisfy the net deposit liabilities to such
31 governmental units;

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

43 f. If the proceeds of the sale of the collateral of a defaulting
44 depository which is an association are insufficient to pay in full the
45 net deposit liability of such depository to all affected governmental
46 units, he shall assess the deficiency against all such other public
47 depositories having public funds on deposit as of the occurrence of

1 the event of default in the proportion that the maximum liability of
2 each such other public depository bears to the aggregate of the
3 maximum liabilities of all such other depositories, but no such
4 assessment shall exceed the maximum liability of any such other
5 depository;

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

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

21 i. No State bank, national bank, ¹~~credit union~~, or ¹ savings
22 bank ¹, or credit union¹ shall be liable with respect to the
23 occurrence of an event of default of an association, and no
24 association shall be liable with respect to the occurrence of an event
25 of default of a State bank, a national bank, ¹~~a credit union~~, or ¹ a
26 savings bank ¹, or a credit union¹.

27 (cf: P.L.1970, c. 236, s. 5)

28
29 4. Section 11 of P.L.1984, c. 171 (C.17:13-89) is amended to
30 read as follows:

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

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

- 1 h. Discount or sell any of its assets, and purchase the assets of
- 2 another credit union, subject to the approval of the commissioner;
- 3 i. Make deposits and invest in legally chartered banks, savings
- 4 banks, savings and loan associations, trust companies, and other
- 5 credit unions, including corporate credit unions, and invest funds as
- 6 otherwise provided in this act;
- 7 j. Hold membership in other credit unions organized under this
- 8 act, and in associations and organizations controlled by or fostering
- 9 the interests of credit unions, including a central liquidity facility
- 10 organized under state or federal law;
- 11 k. Act as fiscal agent for and receive payment on shares or
- 12 deposits, or both, from the federal government, this State, or any
- 13 agency or political subdivision thereof;
- 14 l. Have and exercise all the powers of corporations organized
- 15 under Title 14A of the New Jersey Statutes which are not
- 16 inconsistent with this act;
- 17 m. Maintain service facilities, including automated terminals at
- 18 locations other than its principal office upon the approval of the
- 19 commissioner. The maintenance of these facilities shall be
- 20 reasonably necessary to furnish service to its members. A credit
- 21 union may join with one or more financial institutions in the
- 22 operation of a service facility to meet member needs;
- 23 n. Contract with outside vendors to make insurance and group
- 24 purchasing plans available to its members and receive compensation
- 25 from the vendors in return for performing administrative functions
- 26 on their behalf;
- 27 o. Participate in loans to credit union members jointly with
- 28 other credit unions, credit union organizations, or financial
- 29 institutions, provided that the originating credit union retains an
- 30 interest of at least 10% of the face amount of the loan;
- 31 p. Participate in any guaranteed loan program of the federal or
- 32 state government;
- 33 q. Purchase the conditional sales contracts, notes, and similar
- 34 instruments of its members;
- 35 r. Purchase and maintain insurance on behalf of any person
- 36 who is an officer, director, employee, or agent of the credit union;
- 37 s. Collect, receive and disburse monies in connection with the
- 38 providing of negotiable checks, money orders, travelers' checks, and
- 39 similar instruments, and for any other purposes which may provide
- 40 benefit or convenience to its members, and to charge a reasonable
- 41 fee for these services;
- 42 t. Declare dividends to its members, as provided in the bylaws
- 43 or by rules and regulations of the commissioner;
- 44 u. Participate in government programs designed to alleviate
- 45 social and economic problems at the community, state, or regional
- 46 levels; and

1 v. Act as a public depository pursuant to the provisions of ¹the
2 “Governmental Unit Deposit Protection Act,”¹ P.L.1970, c.236
3 (C.17:9-41 et seq.) .
4 (cf: P.L.1984, c. 171, s. 11)

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

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

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

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

34 (a) an average daily balance in excess of \$2 million but less than
35 \$25 million: multiply by a factor of .0005.

36 (b) an average daily balance of \$25 million or over but less than
37 \$50 million: multiply by a factor of .00075.

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

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

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

45 c. The Department of Education may adopt, pursuant to the
46 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
47 seq.) any rules and regulations necessary to implement the

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

6

7 ¹**[5.]** 6.¹ This act shall take effect immediately.