As Introduced

136th General Assembly
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H. B. No. 612

Representative Pizzulli

To amend section 1761.10 of the Revised Code regarding credit union share guaranty corporations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1761.10 of the Revised Code be amended to read as follows:

Sec. 1761.10. (A)(1) A credit union share guaranty corporation shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the corporation and approved by the superintendent of insurance, except that the normal operating level shall at all times be no less than one per cent of the aggregate share capital of participating credit unions, irrespective of how denominated. The fund of the corporation shall be comprised of the following:

(a) The account for each participating credit union;

(b) Retained and undivided earnings;

(c) Any reserves required by statute or order of the superintendent of credit unions;

(d) Borrowings made in accordance with section 3901.72 of the Revised Code.

(2)(a) Each participating credit union shall contribute to and maintain with the corporation a capital contribution to be credited to its account, in an amount equal to at least one per cent of its aggregate share capital as is established as the normal operating level of the fund by the board of directors pursuant to division (A)(1) of this section and approved by the superintendent of insurance. Each participating credit union's account shall be adjusted annually to reflect changes in the participating credit union's aggregate share capital in accordance with procedures adopted by the board of directors and may be adjusted more frequently if an increase in the aggregate share capital or a change in the financial condition of the participating credit union warrants such adjustment. Those credit unions participating in excess coverage shall pay a premium as prescribed by the board of directors of the corporation and as filed and approved under Chapter 3937. of the Revised Code.

(b) The approval of the superintendent of insurance concerning the normal operating level of the guarantee fund expires upon written determination by the superintendent of insurance that there is cause for additions to the guarantee fund. This determination is not subject to any hearing requirement under Chapter 119. of the Revised Code, provided a credit union guaranty corporation may request a supervisory conference under section 1761.19 of the Revised Code.

(3) If, at the close of a fiscal year, the guarantee fund exceeds the normal operating level determined by the board of directors of a credit union share guaranty corporation, the board of directors may make a distribution of the excess to

participating credit unions. Any distribution shall be made to each participating credit union in the proportion that each participating credit union's account bears to the total aggregate participating credit union accounts of the corporation. No determination by the board of directors is effective until approved by the superintendent of insurance. No distribution shall be made, nor shall it confer any rights, until approved by the superintendent of insurance.

(4) The amount of the account of each participating credit union shall be carried on the books of the individual participant as a deposit with the corporation.

(5) Notwithstanding any other provision of this chapter, the corporation shall require the participating credit unions to make capital contributions to maintain the normal operating level set by division (A)(1) of this section during any calendar year in which the fund has been reduced below the minimum operating level as a result of payment of any deficiencies in credit union share accounts.

(B)(1) The corporation may annually or more frequently levy and collect additions to the capital contribution as the board of directors of the corporation considers appropriate, if the superintendent of credit unions and the superintendent of insurance approve of such additions. Whenever the superintendent of credit unions or the superintendent of insurance considers it necessary for the maintenance of the normal operating level of the fund, the superintendent shall order the corporation to levy and collect additions to the capital contributions. Such order shall specify the amount of the addition and the reasons upon which the order is based.

(2) The corporation shall send a written notice of capital

contributions required pursuant to division (B)(1) of this section to each participating credit union within ten days after the levy of any capital contributions. Capital contributions shall be paid to the corporation by each participating credit union not later than thirty days following mailing of written notice of any required capital contribution.

(C)(1) In the event of potential impairment of the fund, a special assessment of the fund may be levied by the corporation on participating credit unions the corporation insures for primary coverage, with the approval of the superintendent of credit unions or the superintendent of insurance. Impairment for this purpose is deemed to exist when the corporation's liabilities and share capital exceed its assets. Whenever the superintendent of credit unions or the superintendent of insurance considers it necessary to avoid an impairment of the fund, the superintendent shall order the corporation to levy a special assessment. Such order shall specify the amount of the assessment and the reasons upon which the order is based.

(2) The corporation shall send a written notice of the special assessment required pursuant to division (C)(1) of this section to each participating credit union within ten days after the levy thereof. Special assessments shall be paid to the corporation by each participating credit union not later than thirty days following mailing of written notice of any special assessment unless for good cause shown the time period is extended.

(D)(1) The corporation may annually, or more frequently, levy on and collect special premium assessments from participating credit unions the corporation insures for primary coverage as the board of directors of the corporation considers necessary when the guarantee fund has experienced, or is expected to experience, a net loss for any one year, if the superintendent of credit unions and the superintendent of insurance approve of the special premium assessment.

(2) The corporation shall send a written notice of the special premium assessment levied under division (D)(1) of this section to each participating credit union within thirty days after receipt of the approval of the superintendent of credit unions and the superintendent of insurance to charge the assessment. Special premium assessments shall be paid to the corporation by each participating credit union not later than thirty days after receipt of the notice of the assessment.

(3)(a) With the written approval of the superintendent of insurance, the corporation may declare and pay a cash dividend to those participating credit unions that are participating credit unions as of the date of the declaration and that have paid special premium assessments to the corporation. The amount of the dividend allocable to a participating credit union shall be determined based on the proportion of the special premium assessments paid by the credit union as compared to the total of all special premium assessments collected by the corporation.

(b) The superintendent shall approve or disapprove a corporation's request for approval to pay a cash dividend as provided in division (D)(3)(a) of this section within thirty days after receiving the corporation's request for approval.

(E) A report of each capital contribution that may be required pursuant to division (B) of this section shall be made to the superintendent of credit unions and the superintendent of insurance within ninety days of the special assessment levy. A report of each special assessment or special premium assessment that is required pursuant to division (C) or (D) of this section shall be made to the superintendent of credit unions and the superintendent of insurance within ten days after mailing the written notice thereof to participating credit unions.

(F)(1) In the event any participating credit union fails to pay an annual capital contribution when due, the corporation shall report such default in writing to the superintendent of credit unions and the superintendent of insurance and the appropriate credit union supervisory authority or the national credit union administration within twenty-four hours of such default, and shall revoke after thirty days' notice the participating credit union's participation in the corporation, unless good cause is shown for the delay.

(2) In the event any participating credit union fails to pay any additional capital contribution, premium, fee, or assessment when due, the corporation shall report such default in writing to the superintendent of credit unions and the superintendent of insurance and the appropriate credit union supervisory authority or the national credit union administration within twenty-four hours of such default, and shall revoke after thirty days' notice the participating credit union's participation in the corporation, unless good cause is shown for the delay.

(3) The thirty-day notice of revocation required under divisions (F)(1) and (2) of this section does not apply to the revocation of excess coverage.

(G) Any participating credit union that is voluntarily liquidated, any participating credit union that withdraws from participation in the corporation and obtains a different form of share guaranty or insurance pursuant to section 1733.041 of the

Revised Code or similar state statute, or any participating credit union that merges with another credit union that becomes the surviving credit union whose shares are guaranteed or insured by a different form of guaranty or insurance may be refunded in an amount equal to the balance of its capital contribution account. Such reimbursement of a participating credit union's capital contribution account balance shall be paid only if and when the guarantee fund exceeds its normal operating level as calculated without the account of the withdrawing credit union.

(H) In the event of a merger of two or more participating credit unions where the surviving credit union is to be insured by the corporation, the funds in the capital contribution account of each credit union shall be transferred to the account of the surviving credit union.

(I) ~~If~~ Subject to division (J) of this section, if a credit union share guaranty corporation is dissolved, the net assets after settling any recorded, contingent, and contractual liabilities, and all costs of dissolution shall be distributed to the participating credit unions in accordance with their share balances, less any outstanding debts owed to the corporation.

(J) Notwithstanding any contrary provision of the Revised Code, if a credit union share guaranty corporation is a nonprofit organization recognized under section 501(c)(6) of the "Internal Revenue Code of 1986," 26 U.S.C. 1, et seq., and the dissolution of the corporation is caused by a reason outside the corporation's control, after settling any recorded, contingent, and contractual liabilities, and all costs of dissolution, all of the following apply:

(1) The corporation shall return the capital contributions to the participating credit unions that are members of the corporation on the date the corporation files the certificate of dissolution with the secretary of state.

(2) If the corporation has remaining assets after returning the capital contributions as required under division (J)(1) of this section, transfer the remaining assets to any surviving wholly owned subsidiary of the corporation. If no wholly owned subsidiary exists or survives, the corporation shall distribute the remaining assets to the participating credit unions in accordance with the participating credit unions' share balances.

(3) The participating credit unions shall be recognized as shareholders of the surviving wholly owned subsidiary, if applicable, in accordance with the participating credit unions' share balances, less any outstanding debts owed to the corporation.

Section 2. That existing section 1761.10 of the Revised Code is hereby repealed.