

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5020

A bill to amend 2003 PA 215, entitled
"Credit union act,"
by amending section 207 (MCL 490.207).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 207. (1) The ~~commissioner~~**DIRECTOR** or his or her
2 authorized agent shall examine the condition and affairs of each
3 domestic credit union, and may examine the condition and affairs of
4 any subsidiary of a domestic credit union, ~~not less frequently than~~
5 **AT LEAST** once every 18 months. The ~~commissioner~~**DIRECTOR** shall
6 determine whether the domestic credit union transacts its business
7 in the manner prescribed by law and the rules promulgated under
8 law.
9 (2) In connection with an examination under subsection (1),
10 the ~~commissioner~~**DIRECTOR** or the ~~commissioner's~~**DIRECTOR'S**

1 authorized agent may examine under oath a ~~director~~, **BOARD MEMBER**,
2 officer, agent, or employee of a domestic credit union concerning
3 the affairs and business of the domestic credit union. The
4 ~~commissioner~~ **DIRECTOR** or the ~~commissioner's~~ **DIRECTOR'S** authorized
5 agent may examine an affiliate of a domestic credit union if
6 necessary to fully disclose the ~~relation~~ **RELATIONSHIP** between the
7 domestic credit union and the affiliate and the effect of the
8 ~~relation upon~~ **RELATIONSHIP ON** the domestic credit union.

9 (3) The ~~commissioner~~ **DIRECTOR** may examine a branch or branches
10 located in this state of a foreign credit union.

11 (4) In an examination under this section, the ~~commissioner~~
12 **DIRECTOR** may use an examination made under the federal credit union
13 act, ~~chapter 750, 48 Stat. 1216, 12 U.S.C. 12~~ **USC** 1751 to 1795k,
14 any other federal law related to the chartering or insuring of
15 financial institutions, or the law of another state governing the
16 activities of foreign credit unions organized in or regulated by
17 that state. The ~~commissioner~~ **DIRECTOR** may require a credit union to
18 furnish a copy of any report required by a federal or state credit
19 union regulatory agency.

20 (5) The ~~commissioner~~ **DIRECTOR** may contract with another state
21 credit union regulatory agency to assist in the conduct of
22 examinations of domestic credit unions with 1 or more branches
23 located in that other state and in examinations of foreign credit
24 unions with 1 or more branches located in this state.

25 (6) The contents of a report of examination ~~of a domestic~~
26 ~~credit union~~ and examination-related documents, **MATERIALS, OR**
27 **INFORMATION THAT ARE** prepared or obtained under this ~~section~~ **ACT**

1 remain the property of the commissioner. A person who disseminates
2 all or part of a domestic credit union's report of examination for
3 purposes other than the legitimate business purposes of the
4 domestic credit union or as otherwise authorized by this act
5 violates this act and is subject to the administrative remedies
6 granted the commissioner under this part. DIRECTOR. ANY DOCUMENT,
7 MATERIAL, OR INFORMATION RELATED TO AN EXAMINATION UNDER THIS ACT
8 IS CONFIDENTIAL BY LAW AND PRIVILEGED, IS NOT SUBJECT TO THE
9 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, IS
10 NOT SUBJECT TO SUBPOENA, AND IS NOT SUBJECT TO DISCOVERY OR
11 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE
12 DIRECTOR IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS, OR
13 INFORMATION IN THE FURTHERANCE OF ANY SUPERVISORY ACTIVITY OR LEGAL
14 ACTION BROUGHT AS PART OF THE DIRECTOR'S DUTIES.

15 (7) THE DIRECTOR, OR ANY PERSON THAT RECEIVED DOCUMENTS,
16 MATERIALS, OR INFORMATION WHILE ACTING UNDER THE DIRECTOR'S
17 AUTHORITY, IS NOT PERMITTED AND MAY NOT BE REQUIRED TO TESTIFY IN
18 ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS,
19 MATERIALS, OR INFORMATION DESCRIBED IN SUBSECTION (6).

20 (8) TO ASSIST IN THE PERFORMANCE OF THE DIRECTOR'S DUTIES
21 UNDER THIS ACT, THE DIRECTOR MAY DO ANY OF THE FOLLOWING:

22 (A) SHARE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING THE
23 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION
24 THAT ARE SUBJECT TO SUBSECTION (6), WITH OTHER STATE, FEDERAL, AND
25 INTERNATIONAL REGULATORY AGENCIES, AND WITH STATE, FEDERAL, AND
26 INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, PROVIDED THAT THE
27 RECIPIENT AGREES TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED

1 STATUS OF THE DOCUMENTS, MATERIALS, OR INFORMATION.

2 (B) RECEIVE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING
3 OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR
4 INFORMATION, FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
5 FOREIGN OR DOMESTIC JURISDICTIONS. THE DIRECTOR SHALL MAINTAIN AS
6 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENTS, MATERIALS, OR INFORMATION
7 RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT THE DOCUMENTS,
8 MATERIALS, OR INFORMATION THE DIRECTOR RECEIVES ARE CONFIDENTIAL OR
9 PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF
10 THE DOCUMENTS, MATERIALS, OR INFORMATION.

11 (C) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF
12 INFORMATION THAT ARE CONSISTENT WITH THIS SUBSECTION.

13 (9) THE DISCLOSURE OF ANY DOCUMENTS, MATERIALS, OR INFORMATION
14 TO THE DIRECTOR, OR THE SHARING OF DOCUMENTS, MATERIALS, OR
15 INFORMATION UNDER SUBSECTION (8), IS NOT A WAIVER OF, AND SHALL NOT
16 BE CONSTRUED AS A WAIVER OF, ANY PRIVILEGE APPLICABLE TO OR CLAIM
17 OF CONFIDENTIALITY IN THOSE DOCUMENTS, MATERIALS, OR INFORMATION.

18 (10) THIS ARTICLE DOES NOT PROHIBIT THE DIRECTOR FROM
19 RELEASING FINAL, ADJUDICATED ACTIONS THAT ARE OPEN TO PUBLIC
20 INSPECTION UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
21 15.231 TO 15.246, TO A DATABASE OR OTHER CLEARINGHOUSE SERVICE
22 MAINTAINED BY THE NATIONAL CREDIT UNION ADMINISTRATION OR ITS
23 AFFILIATES OR SUBSIDIARIES.

24 (11) A PERSON TO WHICH CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
25 MATERIALS, OR INFORMATION IS DISCLOSED SHALL NOT FURTHER
26 DISSEMINATE THOSE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS,
27 OR INFORMATION.

1 (12) ANY PERSON ON WHICH A DEMAND FOR PRODUCTION OF
2 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION IS
3 MADE, WHETHER BY SUBPOENA, ORDER, OR OTHER JUDICIAL OR
4 ADMINISTRATIVE PROCESS, MUST WITHHOLD PRODUCTION OF THE
5 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION
6 AND MUST NOTIFY THE DIRECTOR OF THE DEMAND. IF THE DIRECTOR IS
7 NOTIFIED OF A DEMAND UNDER THIS SUBSECTION, THE DIRECTOR MAY
8 INTERVENE FOR THE PURPOSE OF ENFORCING THE LIMITATIONS OF THIS
9 SECTION OR SEEKING THE WITHDRAWAL OR TERMINATION OF THE ATTEMPT TO
10 COMPEL PRODUCTION OF THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
11 MATERIALS, OR INFORMATION.

12 (13) ANY REQUEST FOR DISCOVERY OR DISCLOSURE OF CONFIDENTIAL
13 AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION, WHETHER BY
14 SUBPOENA, ORDER, OR OTHER JUDICIAL OR ADMINISTRATIVE PROCESS, SHALL
15 BE MADE TO THE DIRECTOR, AND THE DIRECTOR SHALL DETERMINE WITHIN 7
16 DAYS WHETHER TO DISCLOSE THE DOCUMENTS, MATERIALS, OR INFORMATION
17 UNDER THIS ACT. IF THE DIRECTOR DETERMINES THAT THE DOCUMENTS,
18 MATERIAL, OR INFORMATION WILL NOT BE DISCLOSED, THE DIRECTOR'S
19 DECISION IS SUBJECT TO JUDICIAL REVIEW.

20 (14) THE JUDICIAL REVIEW OF A DECISION OF THE DIRECTOR UNDER
21 SUBSECTION (13) MAY INCLUDE IN CAMERA JUDICIAL REVIEW OF THE
22 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION.
23 AFTER JUDICIAL REVIEW, A COURT MAY ONLY ORDER DISCLOSURE OF THE
24 PORTIONS OF THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS,
25 OR INFORMATION THAT ARE RELEVANT AND OTHERWISE UNOBTAINABLE BY THE
26 REQUESTING PARTY.

27 (15) THE DIRECTOR MAY IMMEDIATELY APPEAL ANY COURT ORDER

1 DESCRIBED IN SUBSECTION (14) THAT COMPELS DISCLOSURE OF
2 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION,
3 AND THE ORDER IS AUTOMATICALLY STAYED PENDING THE OUTCOME OF THE
4 APPEAL.

5 (16) IN AN ADDENDUM TO A REPORT OF AN EXAMINATION UNDER THIS
6 SECTION, THE DIRECTOR OR HIS OR HER AUTHORIZED AGENT MAY SUGGEST
7 BEST PRACTICES OR OTHER IMPROVEMENTS IN THE OPERATION OF A DOMESTIC
8 CREDIT UNION THAT ARE NOT REQUIRED BY LAW OR REGULATION OR TO
9 ADDRESS SAFETY AND SOUNDNESS OF THE DOMESTIC CREDIT UNION. THE
10 MANNER IN WHICH A DOMESTIC CREDIT UNION ADDRESSES ISSUES CONCERNING
11 ITS OPERATIONS IS WITHIN THE DISCRETION OF THE CREDIT UNION IN THE
12 EXERCISE OF ITS BUSINESS JUDGMENT, EXCEPT AS REQUIRED BY LAW OR
13 REGULATION OR TO ADDRESS A CONCERN OVER SAFETY AND SOUNDNESS. THE
14 DIRECTOR SHALL NOT TAKE ACTION AGAINST A DOMESTIC CREDIT UNION
15 UNDER THIS ACT BASED ON A FAILURE OR REFUSAL OF A DOMESTIC CREDIT
16 UNION TO FOLLOW A BEST PRACTICE OR OTHER RECOMMENDED IMPROVEMENT IN
17 THE OPERATION OF THE DOMESTIC CREDIT UNION THAT IS SUGGESTED
18 INFORMALLY BY AN EXAMINER OR THAT IS CONTAINED IN AN ADDENDUM TO A
19 REPORT OF EXAMINATION.

20 (17) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
21 ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL ISSUE GUIDANCE
22 TO PROMOTE CONSISTENCY AND DUE PROCESS IN THE EXAMINATION PROCESS
23 UNDER THIS SECTION, INCLUDING, BUT NOT LIMITED TO, ESTABLISHING
24 GUIDELINES THAT DEFINE THE SCOPE OF THE EXAMINATION PROCESS AND
25 CLARIFY HOW EXAMINATION ISSUES WILL BE RESOLVED.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 98th Legislature are
3 enacted into law:

4 (a) House Bill No. 5017.

5 (b) House Bill No. 5018.

6 (c) House Bill No. 5019.

7 (d) House Bill No. 5021.

8 (e) House Bill No. 5022.