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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 445

Sponsor: Senator Dick Posthumus

Committee: Commerce and Technology

Date Completed: 3-8-88

SUMMARY OF SENATE BILL 445 as introduced 9-23-88:

The bill would amend the Credit Union Act to provide for tort immunity for directors, officers, employees and agents of credit unions.

Specifically, the bill would require directors and officers of credit unions to discharge their duties "in good faith and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position". In discharging their duties, directors and officers would be able to rely upon the opinion of the credit union's legal counsel, reports of independent appraisers selected by the board, and financial statements of the credit union that are said to be correct by the credit union's general manager or officer in charge of the credit union's books of account or that are prepared by a certified public accountant or other professionally qualified individual pursuant to a comprehensive audit or other audit of the credit union.

A director could not be held liable to a credit union or its shareholders for monetary damages for a breach of duty as a director unless there was intentional misconduct or a knowing violation of law, the director derived an improper personal benefit from a transaction, or the act or omission occurred before January 1, 1987.

An action against a director or officer for failure to perform his or her duties would have to commence within three years after the cause of action occurred or within two years after the cause was discovered, or should reasonably have been discovered, by the complainant, whichever occurred sooner.

A credit union could indemnify a director, officer, employee, or agent of the credit union or a person serving at the request of the credit union in such a capacity for another credit union, corporation, or other enterprise against legal expenses actually and reasonably incurred in an action, lawsuit, or proceeding, including actions or suits by or in the right of the credit union to procure a favorable judgment, if he or she acted in good faith and not in a manner opposed to the best interests of the credit union or its shareholders and, if the action were a criminal action, the person had no reasonable cause to believe that his or her conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order, conviction, settlement or plea of nolo contendere could not create a presumption that the person did not act in good faith and in a manner believed to be in the best interests of the credit union and its shareholders or that the person had cause to believe that his or her conduct was unlawful.

Indemnification could not be made for any claim, issue, or matter in which the person had been found liable to the credit union unless and only to the extent that the court in which the action or suit was brought determined that the person was fairly and reasonably entitled to indemnity for expenses the court considered proper.

Unless ordered by a court, indemnification could be made by a credit union only upon the determination that the person to be indemnified met the applicable standard of conduct. The determination could be made in any of the following ways:

- By a majority vote of a quorum of directors who were not parties to the action.
- By a majority vote of a committee designated by the board, consisting solely of two or more directors who were not parties to the action.
- By independent legal counsel in a written opinion.
- By the shareholders.

If a person were entitled to indemnification for only a portion of the expenses incurred in an action or proceeding, the credit union could indemnify the person for that portion.

The credit union could pay expenses incurred in defending a civil or criminal action before final disposition of the action provided the director, officer, employee or agent agreed to repay the expenses if it were ultimately determined that he or she was not entitled to indemnification.

The indemnification and advancement of expenses could not be considered exclusive of any other rights to which those seeking indemnification or advancement of expenses were entitled. Indemnification would continue for a person who ceased to be an officer, director, employee or agent and would inure to the benefit of the heirs, executors and administrators of the person.

The term "credit union" would include all other credit unions which become related to the credit union by a consolidation or merger and the resulting or continuing credit union, and indemnification would cover directors, officers, employees and agents of the other credit unions as well.

Proposed MCL 490.9a-490.9f

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: J. Schultz

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

S.B. 445 (3-8-88)