

Act No. 346  
Public Acts of 1996  
Approved by the Governor  
June 27, 1996  
Filed with the Secretary of State  
June 28, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Senators Bouchard, Bennett and Rogers

# **ENROLLED SENATE BILL No. 975**

AN ACT to amend section 16 of Act No. 285 of the Public Acts of 1925, entitled as amended "An act to provide for the organization, operation, and supervision of credit unions; to provide for the conversion of a state credit union into a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States and for the conversion of a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States into a state credit union; and to provide for the merger of credit unions organized and supervised under the laws of this state, credit unions organized and supervised under the laws of any other state or territory of the United States, and federal credit unions," as amended by Act No. 246 of the Public Acts of 1992, being section 490.16 of the Michigan Compiled Laws; and to add section 9a.

*The People of the State of Michigan enact:*

Section 1. Section 16 of Act No. 285 of the Public Acts of 1925, as amended by Act No. 246 of the Public Acts of 1992, being section 490.16 of the Michigan Compiled Laws, is amended and section 9a is added to read as follows:

Sec. 9a. (1) An official of a credit union shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, an official may rely upon the opinion of legal counsel for the credit union, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the credit union, or upon financial statements of the credit union represented to him or her to be correct by the general manager or the officer of the credit union having charge of its records, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the credit union.

(2) A credit union may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the credit union, by reason of the fact that he or she is or was an official, employee, or agent of the credit union or is or was serving at the request of the credit union as an official, employee, or agent of 1 or more credit unions or other enterprises, whether for profit or not, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the credit union or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the credit union or its members and with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(3) A credit union may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the credit union to procure a judgment in its favor by reason of the fact that he or she is or was an official, employee, or agent of the credit union or is or was serving at the request of the credit union as an official, employee, or agent of 1 or more credit unions or other enterprises, whether for profit or not, against expenses, including actual and reasonable attorney fees and amounts paid in settlement incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the credit union or its members. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the credit union unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses that the court considers proper.

(4) To the extent that an official, employee, or agent of a credit union has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in subsection (8), or in defense of any claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against expenses, including actual and reasonable attorney fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section.

(5) An indemnification under subsection (2) or (3), unless ordered by a court, shall be made by the credit union only as authorized in the specific case upon a determination that indemnification of an official, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (2) or (3). This determination shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, then by a majority vote of a committee of directors who are not parties to the action. The committee shall consist of not less than 2 disinterested directors.

(c) By independent legal counsel in a written opinion.

(d) By the members.

(6) If a person is entitled to indemnification under subsection (2) or (3) for a portion of expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the credit union may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

(7) Expenses incurred in defending a civil or criminal action, suit, or proceeding described in subsection (2) or (3) may be paid by the credit union in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of an official, employee, or agent to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the credit union. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

(8) The indemnification or advancement of expenses provided under subsections (2) to (7) is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the bylaws or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in subsections (2) to (7) continues as to a person who ceases to be an official, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

(9) For purposes of subsections (2) to (8), references to the credit union include all other credit unions which become related to the credit union by a consolidation or merger and the resulting or continuing credit union, so that a person who is or was an official, employee, or agent of the credit union which was consolidated or merged into the credit union or is or was serving at the request of the credit union which was consolidated or merged into the credit union as an official, partner, trustee, employee, or agent of 1 or more other credit unions, or other enterprises, whether for profit or not, shall stand in the same position under this section with respect to the resulting or continuing credit union as he or she would if he or she had served the resulting or continuing credit union in the same capacity.

Sec. 16. (1) Loans to members shall be made subject to the conditions contained in the bylaws. A borrower may repay his or her loan in whole or in part any day the credit union is open for business.

(2) Except when otherwise provided in the bylaws, a director or member of either the credit committee or supervisory committee shall not borrow from the credit union in which he or she holds office beyond the amount of his or her holdings in shares and deposits.

(3) A credit union may permit its directors, credit committee members, and supervisory committee members to borrow in excess of their share and deposit holdings on terms and conditions and in amounts as the bylaws may provide. A director, officer, credit committee member, or supervisory committee member shall not act as a cosigner, guarantor, or indorser for borrowers other than members of his or her immediate family.

(4) Loans to directors or members of the credit committee or supervisory committee shall be made in the same manner as are loans to other members, except that the applicant shall not pass on his or her own loan. Except to the extent that the loans are secured by a specific pledge of shares or deposits, the aggregate amount of loans to or guaranteed by directors and members of the credit committee and supervisory committee shall not exceed 10% of the share capital of a credit union and shall be shown in aggregate as a separate item in the balance sheet of the credit union and in all reports rendered by the credit union.

(5) Upon written application by a member, the credit union may approve a line of credit or other open-end credit agreement, and may grant loan advances to the member within the limit of that open-end credit agreement. If an open-end credit agreement has been approved, an additional loan application shall not be required by this act as long as the aggregate indebtedness does not exceed the approved limit or a higher approved limit as subsequently established by the credit union. At its option, the credit union may require reapplication for an open-end credit agreement, either periodically or as circumstances warrant. Except to the extent that it has contracted to the contrary, a credit union may unilaterally increase the approved limit or may increase the approved limit upon the request of the member.

(6) A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations, or other financial organizations. If a credit union incorporated under this act originates a loan, it shall retain an interest in the loan of at least 10%.

(7) A credit union may participate in a guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

This act is ordered to take immediate effect.

-----  
Secretary of the Senate.

-----  
Clerk of the House of Representatives.

Approved -----

-----  
Governor.