

Legislative Analysis



REVISIONS TO CREDIT UNION ACT

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House Bill 5017 (reported from committee as H-2)
Sponsor: Rep. Anthony G. Forlini

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5018 (H-1)
Sponsor: Rep. Peter Pettalia

House Bill 5019 (H-2)
Sponsor: Rep. Paul Clemente

House Bill 5021 as introduced
Sponsor: Rep. Tom Barrett

House Bill 5020 (H-1)
Sponsor: Rep. Lana Theis

House Bill 5022 (H-1)
Sponsor: Rep. Leslie Love

Committee: Financial Services
Complete to 12-7-15

REVISED SUMMARY:

House Bills 5017-5022 would make general amendments to the Credit Union Act (Public Act 215 of 2003, MCL 490.102 et al.), the act which provides for the organization, operation, regulation, and supervision of credit unions; prescribes their powers and duties; establishes the powers and duties of state regulators; and prescribes penalties, civil sanctions, and remedies. The bills are tie-barred to each other with the exception of House Bill 4019, which stands alone.

In each bill in the package the term "commissioner" is replaced by "director," in many provisions reflecting the creation of the Department of Financial and Insurance Services (DIFS). Among other things the bills would do the following:

- House Bill 5017 establishes the Credit Union Regulatory Fund and makes numerous changes to the regulation of credit unions, as well as modernizing definitions of terms.
- House Bill 5018 addresses the supervision of domestic credit unions and bylaws.
- House Bill 5019 addresses the authority to organize or invest in service organizations that provide trust and other services.
- House Bill 5020 would revise the examination process by the department.
- House Bill 5021 deals with credit union mergers.
- House Bill 5022 allows loan and savings promotional raffles

FISCAL IMPACT:

The bills would not have a significant fiscal impact on the Department of Insurance and Financial Services (DIFS) for the following reasons:

(1) Most of the amendments to the act within the bills would not affect the implementation, administration, or enforcement of the act, and those that would, would likely only nominally impact DIFS expenditures (e.g., costs of promulgating new rules, publishing new guidance, revising standardized forms, training staff about changes), and

(2) The "base fee" that the act authorizes DIFS to establish and which is utilized to calculate the annual operating fees levied on credit unions is currently within statutory limitations (\$2.10 in FY 2015, subject to a maximum of \$3.50); accordingly, any increases in DIFS expenditures could be sufficiently offset with revenue generated via increased annual operating fees.

House Bill 5017

Regulatory Fund and General Amendments

Regulatory Fund

The bill would create the Credit Union Regulatory Fund (Fund) to be established in the Department of Treasury. The fund would consist of fees, civil or administrative fines, and any other money collected under the act, except for fines imposed for violations of Section 217 (xxx); money appropriated to the fund; donations of money made to the fund from any source; and interest and earnings from fund investments. Money in the fund at the end of a fiscal year would remain in the fund and not revert to the state's General Fund. Upon appropriation, DIFS would use the money in the fund only for credit union regulatory purposes. DIFS would be the administrator of the fund for auditing purposes. The state treasurer would direct the investment of the Fund.

Delegation of Board Duties

Under the act, the board of a credit union is required to perform certain duties. The bill says that if a credit union board delegates a duty to the general manager or chief executive officer, and either one acts pursuant to that delegation, the general manager or chief executive officer would have to provide a summary of the actions taken to the credit union board at the next regularly scheduled meeting of the credit union board.

In addition the bill would newly allow the delegation of the following: establishing the minimum individual shareholdings of members; acquiring, selling, or encumbering real property; borrowing money; fixing the amount of surety bonds for all officers and employees who handle money; and specifying forms and procedures for applications for membership and setting criteria for use in determining whether to accept an applicant into membership.

Reimbursement and Insurance for Board Members, etc.

The act says, generally, that board and committee members shall not receive compensation for their service. Under the bill, a domestic credit union could provide reasonable life, health, accident, disability, or similar insurance protection, and reimbursement for reasonable expenses that are incidental to the performance of official business of the credit union to board members, associate board members, supervisory committee members and

credit committee members, as well as to members of other committees that perform significant ongoing functions related to credit union operations.

Board Meetings

Under the bill, the board of a domestic credit union would have to meet at least six times in each calendar year and at least every other month. The board must meet in person or by means of electronic communication devices that enable all participants in a meeting to communicate with each other.

Associate Board Members

In addition to the credit union board members currently required under the act, the board of a domestic credit union could appoint one or more associate board members. All of the following would apply concerning associate board members:

- A credit union board in its discretion would determine whether to appoint associate board members, the number of associate board members, if any, and their duties. The credit union board would have authority concerning the appointment and removal of individuals as associate board members.
- A credit union board could not appoint an individual as an associate board member who does not meet the eligibility requirements described in the act for board members.
- An individual appointed as an associate board member would serve in an ex officio capacity. An associate board member could participate in meetings of a credit union board, but only in an advisory capacity; has no authority to vote or act as a board member; and would not be considered a board member for purposes of this act.
- An associate board member would be required to sign a confidentiality agreement, to ensure that any information concerning the credit union remains confidential. Disclosure of confidential information by an associate board member without approval of the director would be a violation of the act.

Board Member Oath

The specifies that the oath taken when a board member is first elected or appointed to the credit union board, to diligently and honestly perform the duties of the office and not knowingly violate any provisions of the act, would remain in effect as long as the board member remains in office.

Supervisory Committee Vacancies

The bill specifies that an individual appointed to fill a vacancy on the supervisory committee would serve for the remainder of the term of the vacant position.

Estate Membership in Domestic Credit Union

A domestic credit union could accept the estate of an individual as a member if the individual was a member at the time of death, or was eligible for membership at the time

of death, or the personal representative of the individual's estate is eligible for membership in the credit union.

Termination of Membership

The bill allows the general manager or chief executive officer of a domestic credit union (rather than, as now, the board), or a designee, to suspend some or all services to a member, or terminate the membership of any person that causes loss to a credit union; commits fraud or another misdeed against the credit union; engages in inappropriate behavior involving another individual, such as physical or verbal abuse of another member or an employee. (These last two are new offenses in the act.)

A member that has services suspended or a person that has its membership terminated could appeal the suspension or termination to the credit union board within 90 days after the date of the suspension or termination. The credit union board would have final authority to resolve an appeal.

Membership by Legal Entity

A domestic credit union could accept a legal entity as a member if that entity does business within the geographic area of the credit union's field of membership. Currently, a legal entity must be composed for the most part of the same general group as the membership of the domestic credit union.

Domestic Credit Union Powers

The act currently allows a credit union to purchase the assets of another domestic credit union and, with state approval, assume any of the liabilities of another credit union. The bill instead allows the purchase of assets and assumption of liabilities of another "depository institution."

Under the bill, an agreement to acquire and hold buildings or land jointly with other credit unions or financial organizations would require prior approval of the director. The director would be required to act on a completed application within 30 days after it is filed.

The act currently specifies that a domestic credit union's investments or contractual obligations direct, indirect, or contingent, in land and buildings may not exceed five percent of its assets without the approval of the commissioner. Under the bill prior approval would not be required if all of the following requirements are met:

- a) Pro forma projections over the next three years are reasonably estimated to provide positive earnings and document the ability of the credit union to meet its short-and long-term liquidity obligations.
- b) The director determined that the credit union is well capitalized.
- c) The credit union has not been the subject of a cease and desist order, or placed in receivership or conservatorship by the director within the preceding three years.
- d) The director determined that the credit union is in overall sound and fundamentally sound condition.

The act allows domestic credit unions to make charitable contributions, if the individual contributions and the aggregate amount of the contributions are reasonable. The bill would also allow a credit union to establish charitable donation accounts if those accounts meet the requirements of the federal National Credit Union Administration Act (12 CFR Part 721.3). Investment yields generated in a charitable donation account would need to be used for charitable donations. The credit union would have to notify the director before it established a charitable account.

The bill would allow a credit union to do any of the following in an underserved area or for someone who does not have an established relationship with a financial institution: financial counseling; providing educational scholarships; and to invest in interest rate derivatives for mitigating portfolio risk. The credit union would need to notify the DIFS director at least 60 days before it begins a program to invest in interest derivatives. A domestic credit union would have to conduct such an investment program in a safe and sound manner. Any investment in interest rate derivatives would have to meet standards for an obligation specified in the act.

Automated Information Processing Services

Under the act, a domestic credit utilizing automated information processing services of a vendor must enter into a written contract agreement for those service. The bill would eliminate the extensive provisions in the act governing such contracts and instead says that any vendor or subcontractor that has access to confidential member information would be subject to regulation and examination by the director.

Domestic Credit Union Insurance Program

Under the bill, before a domestic credit union makes an insurance program available to its members, it would be required to conduct a reasonable due diligence review of the product. The credit union would have to provide the director access to any files that are relevant to that review on request. This replaces similar language in the act.

Loans to Officers and Management

The act says the credit union could not make a loan or extend a line of credit if an official or senior management employee will receive a commission, fee, or compensation other than salary if the loan or line of credit is approved. The bill says, that this provision does not limit or prohibit arrangements that compensate employees who are not senior management employees based on the volume of loans generate by those employees. The bill also says that the DIFS director could not impose any additional limitations on the authority of a domestic credit union to review a loan application of, or approve or deny a loan to, an official of the credit union that do not apply to member loans generally.

Borrowing Limit

Under the bill, a credit union could not loan an amount that exceeds 25 percent of the credit union's unimpaired capital to a borrower. Currently, this provision refers to \$20,000 or 25 percent of its net worth, whichever is greater. However, the following would apply for purposes of this section.

****If the director determines at any time the interests of a group of more than one person are so interrelated that they should be considered as a unit for which credit was extended, the total loans and extensions of credit and leases of person of that group would be combined and considered loans and extensions of credit and leases to one borrower.**

****A credit union does not violate the section solely because the indebtedness of a group exceeds the percentage limitation at the time of a determination by the director that the indebtedness of that group would have to be combined. However, it would be a violation of this section if the credit union does not do one of the following:**

- If required by the director, within a reasonable time dispose of a sufficient amount of the indebtedness of the group so that the amount of the remaining indebtedness is within the percentage limitation. The term "reasonable time" would be defined to mean a period of time that the director determines reasonable and if the credit union is making a reasonable effort to dispose of the excess indebtedness in a manner designed to avoid a loss of any portion of that excess indebtedness, is a period of at least 180 days.
- If permitted by the director, if the credit union is well capitalized, establish a reserve in the amount that the group's indebtedness exceeds the percentage limitation rather than disposing of the excess amount.

Non-Member Borrowers and Co-Signers

As additional security for a loan transaction with a borrower, a credit union could permit a person that is not a member to act as an additional borrower, a cosigner, or a guarantor of the loan.

Investments that Become Impermissible

The bill says that if a domestic credit union invests funds in a security, obligation, or other instrument that at the time is permitted under the act, but the investment subsequently become impermissible because of a change in circumstances or law, and the director finds that continuing to hold the investment will have an adverse effect on the safety and soundness of the credit union, then the director could require the credit union develop a reasonable plan for the divestiture of the investment.

Sale or Pledge of Member Obligations

Under the act, a credit union can sell all or part of an obligation of a member if the sale meets the conditions of the sale policy adopted by the credit union board and if the board approves the sale. The bill would allow senior management employees to approve the sale if the board has delegated such authority in a written board policy.

A domestic credit union can pledge all or any part of an obligation of a member. The bill would require that such a pledge meet the conditions of the pledge policy adopted by the board and the pledge be approved by senior management employees to who the board has, in written board policy, delegated the authority to approve pledges. If one or more pledges are approved by a senior management employee, he or she would be required to provide a

summary of the pledges to the credit union board at the next regularly scheduled board meeting.

Branch Location and Employee Titles

A credit union would be required to provide written notice to the director seven days before the change of its principal location. If the name of the title of an official senior management employee changes, the credit union would need to provide it to the director within seven days after the change.

Definition of "Branch"

The bill would specify that the term "branch" does not include elementary, middle, and high schools where an employee or agent of a credit union only accepts deposits; electronic funds transfer facilities that are made available to two or more depository institutions; a loan production office; or a mobile office.

House Bill 5018 Credit Union Supervision

Currently, the act allows a credit union to conduct its business solely by mail or through electronic communication with having a physical location where members transact business with the credit union if the commissioner gives prior approval. The bill would allow this if the credit union provides prior written notice.

The bill changes references from "commissioner" to "director" in sections addressing credit union bylaws. It also refers to "foreign credit unions" rather than foreign credit union "branches." It makes various other technical changes to the

House Bill 5019 Authority to Invest in Credit Union Service Organizations

Under the act currently, a domestic credit union may organize, invest in, or loan money to one or more credit union service organizations that engage in providing certain products or services to credit unions as specified in the Act. House Bill 5019 says this would also apply to service organizations that engage in investment administration and other services related to small business equity interests or venture capital fund investments if all of the following are met:

- The target small business for a specific equity investment is a member of at least one of the credit unions that have an ownership or investment interest in the credit union service organization; has its principal office in this state; and either more than 50 percent of its assets are in this state or more than 50 percent of its employees are employed in this state.
- Any venture capital fund established or funded by the credit union service organization provides an amount equal to at least 51 percent of its available funds

to member small businesses that have their principal offices in this state or more than 50 percent of their employees employed in this state.

- A credit union's aggregate investment in the credit union service organization that is offering small business equity and venture capital investment services does not exceed 10 percent of the credit union's net worth.
- None of the officers or directors of the credit union that have an ownership interest or an investment in a credit union service organization hold an equity position in any small business financed by that credit union service organization.
- A credit union that is an owner or investor in the credit union service organization would ensure that it has enacted and complies with policy guidelines for outstanding obligations; the bill delineates those guidelines in detail.

Under the act, the credit union service organization must agree in writing to obtain an audit from a certified public accountant at least annually and provide a copy of each audit report to the domestic credit union. House Bill 5019 says this subdivision would not apply to a credit union service organization that is consolidated for financial reporting purposes if the consolidated audit program is sufficient to provide reasonable and appropriate coverage to sufficiently test the credit union service organization's financial records.

The bill would define these terms as follows:

"Equity Interests" would mean limited partnership interests and other equity investments in which liability is limited to the amount of the investment, but would not include general partnership interests or other interests that involve general liability. Equity interest could include subordinated or convertible debt.

"Small Business" would mean a corporation, partnership, limited liability company, proprietorship, or other entity formed under the laws of the United States, or a state, district, or other territory of the United States that meets the appropriate United States Small Business Administration definition of small business (13 CFR part 121) and that is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products that previously were not generally available in this state or in making other investments that provide an economic benefit to this state.

"Venture Capital Fund" would mean a limited liability entity that is formed under the laws of the United States, or a state, district, territory of the United States, and whose principal business is or will be making investments in and providing significant managerial assistance to businesses that meet the U.S. Small Business Administration definition of small business.

House Bill 5020

Examinations by the Department

Under the act, the commissioner or an authorized agent must examine the condition and affairs of each domestic credit union, and may examine the condition and affairs of any subsidiary of a domestic credit union not less frequently than once every 18 months. House Bill 5020 says that any document, material, or information related to an examination under this act is confidential by law and privileged, is not subject to the Freedom of Information Act, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director would be authorized to use the documents, materials, or information to further any supervisory activity or legal action brought as part of his or her duties.

Also under the bill, the director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and could not be required to testify in any private civil action concerning any confidential documents, materials, or information.

To assist in the performance of duties, the director could do any of the following:

- (a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information, with other state, federal, and international regulatory agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.
- (b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The director would have to maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information received are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.
- (c) Enter into agreements governing the sharing and use of information that are consistent with the act.

The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information would not be a waiver of, and could not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

This bill would not prohibit the director from releasing final, adjudicated actions that are open to public inspection under the Freedom of Information Act to a database or other clearinghouse service maintained by the National Credit Union Administration or its affiliates or subsidiaries.

A person to which confidential and privileged documents, materials, or information were disclosed could not further disseminate those confidential and privileged documents, materials, or information.

Any person on which a demand for production of confidential and privileged documents, materials, or information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential and privileged documents, materials, or information and must notify the director of the demand. If the director is notified of a demand under this subsection, the director may intervene for the purpose of enforcing the limitations of this section or seeking the withdrawal or termination of the attempt to compel production of the confidential and privileged documents, materials, or information.

Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, would need to be made to the director, and the director would determine within seven days whether to disclose the information. If the director determines not to disclose the documents, materials, or information, the director's decision is subject to judicial review.

The judicial review of a decision of the director could include in camera review of the confidential and privileged documents, materials, or information. After such review, a court could only order disclosure of the portions that are relevant and otherwise unobtainable by the requesting party. The director could immediately appeal any court order that compels disclosure of confidential and privileged documents, materials, or information described in this section and the order is automatically stayed pending the outcome of the appeal.

In a report of an addendum of the report of the examination, the director or authorized agent could suggest best practices or other suggested improvements in the operation of the credit union that are not required by law or required to address safety and soundness of the domestic credit union. The manner in which a credit union addresses issues concerning the operation of a domestic credit union would be within the discretion of the credit union in the exercise of its business judgment, except as required by law or to address a concern over the safety and soundness. The director could not take action against a domestic credit union based on a failure or refusal to follow a best practice or other suggested improvement that is suggested informally by an examiner or contained in an addendum to a report of examination.

Within one year after the effective date of the bill, the director would have to issue guidance to promote consistency and due process in the examination process including but not limited to establishing guidelines that define the scope of the examination process and clarify how issues will be resolved.

House Bill 5021

Credit Union Mergers

Under the act, two or more domestic credit unions may merge into one of the credit unions, or into a newly formed domestic credit union if certain conditions are met. The act says the members of each constituent credit union, except the surviving credit union approving the merger, must approve the plan of merger at a special membership meeting called for that purpose or by mail ballot. If the vote is held at a special meeting, the credit union board must provide each member with written notice of the meeting at least 10 days and not more than 30 days before the meeting. The bill would require notice at least 7 days and not more than 30 days before the meeting.

The bill would eliminate a provision that says the director shall not accept a certificate of merger if an effective date is specified that is more than 90 days after the date of filing.

House Bill 5022

Loan Raffles

The act specifies that if authorized by the credit union board, a domestic credit union may conduct a savings promotion raffle. House Bill 5022 would allow "loan or savings promotion" raffles if all of the following apply:

- It must be conducted so that each token or ticket representing an entity in the raffle has an equal chance of being drawn. A credit union could not conduct a loan promotion raffle in a manner that jeopardizes the domestic credit union's safety and soundness or misleads its members.
- The director could examine the conduct of a loan promotion raffle and could issue a cease and desist order for violation of the section.
- The credit union would be required to maintain records sufficient to facilitate an audit of a savings promotion raffle.

The bill would define "loan promotion raffle" to mean a raffle conducted by a domestic credit union where the sole consideration required for a chance of winning designated prizes is closing on a loan of at least a specified amount or depositing at least a specified amount

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.