

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5019**

A bill to amend 2003 PA 215, entitled
"Credit union act,"
by amending section 407 (MCL 490.407), as amended by 2004 PA 471.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 407. (1) Subject to subsection (3), a domestic credit
2 union may organize, invest in, or loan money to 1 or more credit
3 union service organizations that engage primarily in providing 1 or
4 more of the following products or services to credit unions:
- 5 (a) Automated information processing services.
 - 6 (b) Share draft and other item processing.
 - 7 (c) Credit and debit card services.
 - 8 (d) Microfilm and microfiche services.
 - 9 (e) Printing and supply services.
 - 10 (f) Service center functions.

1 (g) Selling or leasing real estate.

2 (h) Automated teller machine and electronic funds transfer
3 services.

4 (i) Collection activities.

5 (j) Personnel services.

6 (k) Appraisal, closing, or other services in connection with
7 real estate loan activities.

8 (l) Investment management, investment research, and other full
9 service broker-dealer services, but not underwriting of investment
10 securities.

11 (m) Property leasing to credit unions.

12 (n) Accounting and auditing services.

13 (o) Records retention and preservation.

14 (p) Security for data processing equipment and other credit
15 union property.

16 (q) Architectural services, including, but not limited to,
17 providing original designs, remodeling, and redesigning.

18 (r) Administration and other services related to commercial
19 loans and participation loans.

20 (s) Providing management and operating services.

21 (t) Marketing services.

22 (u) Management, development, sale, or lease of fixed assets.

23 (v) Sale, lease, or servicing of computer hardware and
24 software.

25 (w) Sale of repossessed property or other personal property of
26 credit unions.

27 (x) Locator services.

(y) Credit analysis.

(z) Loan origination, processing, servicing, and sale.

(aa) Research services.

(bb) Developing and administering individual retirement accounts or Keogh (HR-10), deferred compensation, or other personnel benefit plans.

(cc) Property maintenance services.

(dd) Courier services.

(EE) INVESTMENT ADMINISTRATION AND OTHER SERVICES RELATED TO SMALL BUSINESS EQUITY INTERESTS OR VENTURE CAPITAL FUND INVESTMENTS IF ALL OF THE FOLLOWING ARE MET:

(i) THE TARGET SMALL BUSINESS FOR A SPECIFIC EQUITY INVESTMENT IS A MEMBER OF AT LEAST 1 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% OF ITS ASSETS ARE IN THIS STATE OR MORE THAN 50% OF ITS EMPLOYEES ARE EMPLOYED IN THIS STATE.

(ii) ANY VENTURE CAPITAL FUND ESTABLISHED OR FUNDED BY THE CREDIT UNION SERVICE ORGANIZATION PROVIDES AN AMOUNT EQUAL TO AT LEAST 51% OF ITS AVAILABLE FUNDS TO MEMBER SMALL BUSINESSES THAT HAVE THEIR PRINCIPAL OFFICES IN THIS STATE OR MORE THAN 50% OF THEIR EMPLOYEES EMPLOYED IN THIS STATE.

(iii) A DOMESTIC 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% OF THE CREDIT UNION'S NET WORTH.

(iv) NONE OF THE OFFICERS OR DIRECTORS OF A DOMESTIC CREDIT

1 UNION THAT HAS AN OWNERSHIP INTEREST OR AN INVESTMENT IN A CREDIT
2 UNION SERVICE ORGANIZATION HOLD AN EQUITY POSITION IN ANY SMALL
3 BUSINESS FINANCED BY THAT CREDIT UNION SERVICE ORGANIZATION.

4 (v) AGGREGATE DOMESTIC CREDIT UNION RISK EXPOSURE THROUGH ALL
5 FUNDING SOURCES, LOANS, OR INVESTMENTS, TO ANY ENTITY OR GROUP OF
6 RELATED ENTITIES, DOES NOT EXCEED 25% OF NET WORTH.

7 (vi) A DOMESTIC CREDIT UNION THAT IS AN OWNER OR INVESTOR IN
8 THE CREDIT UNION SERVICE ORGANIZATION ENSURES THAT THE CREDIT UNION
9 SERVICE ORGANIZATION HAS ENACTED AND COMPLIES WITH POLICY
10 GUIDELINES FOR OUTSTANDING OBLIGATIONS AND THAT THE GUIDELINES
11 INCLUDE AT LEAST ALL OF THE FOLLOWING:

12 (A) A LIMIT ON THE CREDIT UNION SERVICE ORGANIZATION'S
13 EXPOSURE TO NOT MORE THAN 50% OF ITS TOTAL CAPITAL AND SURPLUS IN
14 AN OBLIGOR OR GROUP OF INTERRELATED OBLIGORS.

15 (B) A DESCRIPTION OF THE ACCEPTABLE TYPES OF ENTITIES INTO
16 WHICH EQUITY INVESTMENT MAY BE FUNDED.

17 (C) A DESCRIPTION OF THE ACCEPTABLE BUSINESS ACTIVITIES OF
18 ENTITIES INTO WHICH INVESTMENTS MAY BE FUNDED.

19 (D) A DESCRIPTION OF THE ACCEPTABLE GEOGRAPHIC AREA IN WHICH
20 AN ENTITY'S PRINCIPAL PLACE OF BUSINESS MUST BE LOCATED.

21 (E) A DESCRIPTION OF THE ACCEPTABLE CONCENTRATION RISK
22 GUIDELINES, RELATIVE TO NET WORTH, FOR EQUITY INVESTMENTS,
23 ORGANIZED BY INDUSTRY, GEOGRAPHIC REGIONS, COLLATERAL, AND ANY
24 OTHER MATERIAL EXPOSURE FACTORS.

25 (F) A DESCRIPTION OF THE QUALIFICATIONS AND EXPERIENCE
26 REQUIRED FOR PERSONNEL INVOLVED IN MAKING AND ADMINISTERING EQUITY
27 INVESTMENTS.

1 (G) A REQUIREMENT FOR ORIENTATION AND ONGOING PERIODIC
2 UNDERWRITING ANALYSIS, INCLUDING SPECIFIC DUE DILIGENCE STANDARDS
3 RELATING TO PERIODIC FINANCIAL STATEMENTS, CREDIT REPORTS, TAX
4 DATA, ENVIRONMENTAL IMPACT ASSESSMENTS, INDUSTRY AVERAGE
5 COMPARISONS, AND OTHER DATA THAT MAY BE NECESSARY TO ANALYZE AN
6 ENTITY'S HISTORY OR EXPERIENCE.

7 (H) A REQUIREMENT FOR PERIODIC MARKET VALUE ANALYSES OF ALL
8 EQUITY POSITIONS HELD.

9 (FF) ~~(ee)~~ If approved by the ~~commissioner~~, **DIRECTOR**, any other
10 product or service.

11 (2) Subject to subsection (3), a domestic credit union may
12 organize, invest in, or loan money to 1 or more credit union
13 service organizations that engage primarily in providing 1 or more
14 of the following products or services to credit unions or their
15 members:

- 16 (a) Equipment leasing and financing.
- 17 (b) Payroll services.
- 18 (c) Real estate brokerage services.
- 19 (d) Prepaid legal services.
- 20 (e) Motor vehicle purchasing services.
- 21 (f) Group travel services.
- 22 (g) Insurance, to the extent not prohibited by state law.
- 23 (h) Financial planning, investment counseling, or other
24 financial services.
- 25 (i) Consumer purchasing referral services.
- 26 (j) Income tax services.
- 27 (k) Retirement counseling.

1 (l) Securities brokerage counseling.

2 (m) Estate planning.

3 (n) Personal property leasing.

4 (o) Service contracts or extended warranty contracts for motor
5 vehicles, motorcycles, recreational vehicles, manufactured homes,
6 boats, computers, or other personal property items.

7 (p) Investment management, investment research, or other full-
8 service securities broker-dealer services, but not underwriting of
9 investment securities.

10 (Q) TRUST SERVICES, IF ANY OF THE FOLLOWING ARE MET:

11 (i) THE CREDIT UNION SERVICE ORGANIZATION IS A STATE BANK OR
12 STATE FOREIGN BANK BRANCH THAT HAS TRUST POWERS UNDER PART 4 OF
13 CHAPTER 4 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL 487.14401
14 TO 487.14405, IS A SAVINGS BANK THAT HAS TRUST POWERS UNDER
15 SECTIONS 421 TO 428 OF THE SAVINGS BANK ACT, 1996 PA 354, MCL
16 487.3421 TO 487.3428, OR IS AUTHORIZED TO ACT AS A FIDUCIARY IN
17 THIS STATE UNDER SUBSECTION (2) (C) OR (D) OF SECTION 1105 OF THE
18 BANKING CODE OF 1999, 1999 PA 276, MCL 487.11105.

19 (ii) THE CREDIT UNION SERVICE ORGANIZATION IS PROVIDING THE
20 TRUST SERVICES AS A HOST BANK UNDER AN AGREEMENT DESCRIBED IN
21 SECTION 4402 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL
22 487.14402.

23 (R) ~~(q)~~ If approved by the ~~commissioner~~, DIRECTOR, any other
24 product or service.

25 (3) A domestic credit union may organize, invest in, or loan
26 money to a credit union service organization described in
27 subsection (1) or (2) only if all of the following are met:

1 (a) The credit union service organization is adequately
2 capitalized or has a reasonable plan for adequate capitalization if
3 it is to be formed or is newly formed.

4 (b) The credit union service organization is structured and
5 operated as a separate legal entity from the domestic credit union.

6 (c) The domestic credit union obtains a written legal opinion
7 that the credit union service organization is structured and
8 operated in a manner that limits the domestic credit union's
9 potential liability for the debts and liabilities of the credit
10 union service organization to not more than the loss of money
11 invested in or loaned to the credit union service organization by
12 the domestic credit union.

13 (d) The credit union service organization agrees in writing to
14 prepare financial statements and provide them to the domestic
15 credit union at least quarterly.

16 (e) The credit union service organization agrees in writing to
17 obtain an audit of the credit union service organization from a
18 certified public accountant at least annually and provide a copy of
19 each audit report to the domestic credit union. **THIS SUBDIVISION**
20 **DOES NOT APPLY TO A CREDIT UNION SERVICE ORGANIZATION THAT IS**
21 **CONSOLIDATED FOR FINANCIAL REPORTING PURPOSES IF THE CONSOLIDATED**
22 **AUDIT PROGRAM IS SUFFICIENT TO PROVIDE REASONABLE AND APPROPRIATE**
23 **COVERAGE TO SUFFICIENTLY TEST THE CREDIT UNION SERVICE**
24 **ORGANIZATION'S FINANCIAL RECORDS.**

25 (f) The credit union service organization operates in
26 compliance with applicable federal and state laws.

27 (4) The credit union board of a domestic credit union that

1 organizes, invests in, or lends money to a credit union service
2 organization shall establish, in writing, the maximum percentage
3 amount of assets that the domestic credit union may invest in or
4 loan to the credit union service organization.

5 (5) The senior management employees of a domestic credit union
6 shall not receive any salary, commission, investment income, or
7 other income or compensation from a credit union service
8 organization that is an affiliate of the domestic credit union.

9 (6) In determining compliance with the percentage limitations
10 in section 401(2)(gg), all loans cosigned, endorsed, or otherwise
11 guaranteed by a domestic credit union to credit union service
12 organizations are included in determining the aggregate amount of
13 loans by the domestic credit union.

14 (7) A domestic credit union shall follow generally accepted
15 accounting principles in its accounting of its financial
16 involvement in a credit union service organization.

17 (8) AS USED IN SUBSECTION (1)(EE):

18 (A) "EQUITY INTERESTS" MEANS LIMITED PARTNERSHIP INTERESTS AND
19 OTHER EQUITY INVESTMENTS IN WHICH LIABILITY IS LIMITED TO THE
20 AMOUNT OF THE INVESTMENT, BUT DOES NOT INCLUDE GENERAL PARTNERSHIP
21 INTERESTS OR OTHER INTERESTS THAT INVOLVE GENERAL LIABILITY. EQUITY
22 INTERESTS MAY INCLUDE SUBORDINATED OR CONVERTIBLE DEBT.

23 (B) "SMALL BUSINESS" MEANS A CORPORATION, PARTNERSHIP, LIMITED
24 LIABILITY COMPANY, PROPRIETORSHIP, OR OTHER ENTITY FORMED UNDER THE
25 LAWS OF THE UNITED STATES, OR A STATE, DISTRICT, OR TERRITORY OF
26 THE UNITED STATES, THAT MEETS THE APPROPRIATE UNITED STATES SMALL
27 BUSINESS ADMINISTRATION DEFINITION OF SMALL BUSINESS UNDER 13 CFR

1 PART 121 AND THAT IS PRINCIPALLY ENGAGED IN THE DEVELOPMENT OR
2 EXPLOITATION OF INVENTIONS, TECHNOLOGICAL IMPROVEMENTS, NEW
3 PROCESSES, OR OTHER PRODUCTS THAT PREVIOUSLY WERE NOT GENERALLY
4 AVAILABLE IN THIS STATE OR IN MAKING OTHER INVESTMENTS THAT PROVIDE
5 AN ECONOMIC BENEFIT TO THIS STATE.

6 (C) "VENTURE CAPITAL FUND" MEANS A LIMITED LIABILITY ENTITY
7 THAT IS FORMED UNDER THE LAWS OF THE UNITED STATES, OR A STATE,
8 DISTRICT, OR TERRITORY OF THE UNITED STATES, AND WHOSE PRINCIPAL
9 BUSINESS IS OR WILL BE MAKING INVESTMENTS IN AND PROVIDING
10 SIGNIFICANT MANAGERIAL ASSISTANCE TO BUSINESSES THAT MEET THE
11 UNITED STATES SMALL BUSINESS ADMINISTRATION DEFINITION OF SMALL
12 BUSINESS UNDER 13 CFR PART 121.

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

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

18 (a) House Bill No. 5017.

19 (b) House Bill No. 5018.

20 (c) House Bill No. 5020.

21 (d) House Bill No. 5021.

22 (e) House Bill No. 5022.