

# HOUSE BILL No. 5020

October 27, 2015, Introduced by Reps. Theis, Lucido, Forlini, Iden, McCready, Love, Muxlow, Barrett, Clemente and Victory and referred to the Committee on Financial Services.

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.

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

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

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

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

27           (6) The contents of a report of examination ~~of a domestic~~

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

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

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

24 (A) SHARE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING THE  
25 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION  
26 THAT ARE SUBJECT TO SUBSECTION (6), WITH OTHER STATE, FEDERAL, AND  
27 INTERNATIONAL REGULATORY AGENCIES, AND WITH STATE, FEDERAL, AND

1 INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, PROVIDED THAT THE  
2 RECIPIENT AGREES TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED  
3 STATUS OF THE DOCUMENTS, MATERIALS, OR INFORMATION.

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

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

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

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

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

1 DISSEMINATE THOSE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS,  
2 OR INFORMATION.

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

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

22 (14) THE DIRECTOR MAY IMMEDIATELY APPEAL ANY COURT ORDER THAT  
23 COMPELS DISCLOSURE OF CONFIDENTIAL AND PRIVILEGED DOCUMENTS,  
24 MATERIALS, OR INFORMATION DESCRIBED IN THIS SECTION AND THE ORDER  
25 IS AUTOMATICALLY STAYED PENDING THE OUTCOME OF THE APPEAL.

26 (15) IN A REPORT OF AN EXAMINATION UNDER THIS SECTION, THE  
27 DIRECTOR OR HIS OR HER AUTHORIZED AGENT SHALL NOT INCLUDE BEST

1 PRACTICES OR OTHER SUGGESTED IMPROVEMENTS THAT ARE NOT REQUIRED BY  
2 LAW OR TO ADDRESS SAFETY AND SOUNDNESS OF THE DOMESTIC CREDIT  
3 UNION. THE MANNER IN WHICH A DOMESTIC CREDIT UNION ADDRESSES ISSUES  
4 CONCERNING THE OPERATION OF A DOMESTIC CREDIT UNION ARE WITHIN THE  
5 DISCRETION OF THE CREDIT UNION IN THE EXERCISE OF ITS BUSINESS  
6 JUDGMENT, EXCEPT AS REQUIRED BY LAW OR TO ADDRESS A CONCERN OVER  
7 THE SAFETY AND SOUNDNESS OF THE DOMESTIC CREDIT UNION. THE DIRECTOR  
8 SHALL NOT TAKE ACTION AGAINST A DOMESTIC CREDIT UNION UNDER THIS  
9 ACT BASED ON A FAILURE OR REFUSAL OF A DOMESTIC CREDIT UNION TO  
10 FOLLOW A BEST PRACTICE OR OTHER SUGGESTED IMPROVEMENT THAT IS NOT  
11 REQUIRED BY LAW OR TO ADDRESS A CONCERN OVER SAFETY AND SOUNDNESS.

12 (16) WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
13 ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL ADOPT RULES THAT  
14 ENSURE CONSISTENCY AND DUE PROCESS IN THE EXAMINATION PROCESS UNDER  
15 THIS SECTION, INCLUDING, BUT NOT LIMITED TO, ESTABLISHING  
16 GUIDELINES THAT DEFINE THE SCOPE OF THE EXAMINATION PROCESS AND  
17 CLARIFY HOW EXAMINATION ISSUES WILL BE RESOLVED.

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

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

23 (a) Senate Bill No.\_\_\_\_ or House Bill No. 5017 (request no.  
24 02768'15).

25 (b) Senate Bill No.\_\_\_\_ or House Bill No. 5018 (request no.  
26 02769'15).

27 (c) Senate Bill No.\_\_\_\_ or House Bill No. 5021 (request no.

1 02772'15).

2 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5022 (request no.

3 02773'15).