

CREDIT UNION ACT (EXCERPT)
Act 215 of 2003

ARTICLE 2
SUPERVISION BY COMMISSIONER

PART 1
ADMINISTRATION, SUPERVISION, AND ENFORCEMENT

490.201 Administration and supervision by director; annual operating fee; limitation; report filed by domestic credit union; delinquent fee; waiver; amendment to bylaws or certificate of organization; examination of accounts, books, and records; "records" defined.

Sec. 201. (1) The director shall administer the laws of this state relating to credit unions that are transacting business in this state and shall supervise domestic credit unions and foreign credit unions other than federal credit unions that are transacting business in this state. Each domestic credit union shall report its financial condition as required by the director.

(2) The director shall charge an annual operating fee to each domestic credit union. All of the following apply to the annual operating fee:

(a) Subject to subdivision (d), the director shall establish a fee amount that is sufficient to defray the estimated expenses of the department in performing all credit union examinations and the supervision of domestic credit unions.

(b) The director shall invoice each domestic credit union for the fee before July 1 of each year and each domestic credit union shall pay the operating fee before July 16 of that year.

(c) The director shall compute the fee based on the total assets of the domestic credit union on December 31 of the previous year as shown on the report of the domestic credit union filed with the director under subsection (1).

(d) The amount of the fee is the greater of \$500.00 or the sum of all of the following:

(i) A base fee established by the director of not less than \$1.00 or more than \$3.50 per \$1,000.00 of assets up to \$500,000.00.

(ii) A fee of 40% of the base fee per \$1,000.00 of assets greater than \$500,000.00 up to \$1,000,000.00.

(iii) A fee of 30% of the base fee per \$1,000.00 of assets greater than \$1,000,000.00 up to \$5,000,000.00.

(iv) A fee of 20% of the base fee per \$1,000.00 of assets greater than \$5,000,000.00 up to \$10,000,000.00.

(v) A fee of 10% of the base fee per \$1,000.00 for all assets greater than \$10,000,000.00.

(e) The director shall not require a domestic credit union to pay an operating fee more often than annually.

(3) A corporate credit union organized under this act shall pay an operating fee in the same manner as other domestic credit unions, but the fee shall not exceed \$50,000.00 annually.

(4) Each domestic credit union shall report its financial condition as required by the director. A domestic credit union that fails to file a report with the director when it is due shall pay a fee of \$100.00 for each day the report is delinquent. The director may waive the fee for cause. If a delinquency continues for 15 days, the director may revoke the domestic credit union's certificate of approval and take possession of the business and property of the domestic credit union and maintain possession until the director permits it to continue business or involuntarily dissolves the credit union under section 331(3).

(5) A domestic credit union that amends its bylaws or certificate of organization must file the amendment with the director. The director shall not charge a fee for reviewing and approving or disapproving of an amendment for purposes of section 303.

(6) A domestic credit union shall make all of its accounts, books, and records, in whatever form maintained, available for examination by the director or the director's appointed agent during the normal business hours of the director. A domestic credit union shall do all of the following:

(a) Provide the director with a current schedule of the hours during which the domestic credit union is open.

(b) Designate an individual to provide access to the credit union records and a substitute for that individual.

(c) Provide the director with the current name, address, and telephone number of the individual designated in subdivision (b) and of his or her substitute if the individual is absent.

(d) If the credit union processes any of its records at any location other than its principal place of business, provide the director with the current name and address of the person that processes the records.

(7) As used in subsection (6), "records" includes audit reports and audit working papers described in section 344 unless privileged by law.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004;—Am. 2016, Act 153, Eff. Sept. 7, 2016.

490.202 Fee, fine, or other money received or collected by director; disposition; establishment of credit union regulatory fund.

Sec. 202. (1) A fee, a civil or administrative fine, or any other money received or collected by the director or the department under this act, except a fine imposed for a violation of section 217, is not refundable and shall be deposited into the credit union regulatory fund created in subsection (2).

(2) The credit union regulatory fund is established in the department of treasury. All of the following apply to the credit union regulatory fund:

(a) The fund shall consist of the following:

(i) Fees, civil or administrative fines, and any other money received or collected under this act, except fines imposed for violations of section 217.

(ii) Money appropriated to the fund.

(iii) Donations of money made to the fund from any source.

(iv) Interest and earnings from fund investments.

(b) Money in the fund at the close of a fiscal year shall remain in the fund and shall not revert to the general fund.

(c) Upon appropriation, the department shall use the money in the fund only for credit union regulatory purposes, as determined by the director.

(d) The state treasurer shall direct the investment of the fund.

(e) The department is the administrator of the fund for auditing purposes.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2016, Act 152, Eff. Sept. 7, 2016.

490.203 Office of financial and insurance services; hearing or proceeding; document retention; order or ruling.

Sec. 203. (1) Any hearing or other proceeding pending before the office of financial and insurance services under former 1925 PA 285 before the effective date of this act is transferred to the office of financial and insurance services under this act, and the office of financial and insurance services shall conduct and determine the proceeding as follows:

(a) If the commissioner determines that this act establishes an identical or substantially similar proceeding for the conduct or act that was the basis of the proceeding under former 1925 PA 285, the office of financial and insurance services shall conduct and determine the proceeding under this act.

(b) If the commissioner determines that this act does not establish an identical or substantially similar proceeding for the conduct or act that was the basis of the proceeding under former 1925 PA 285, the office of financial and insurance services shall conduct and determine the proceeding in the manner described in former 1925 PA 285.

(2) The office of financial and insurance services shall retain all of its property, credits, books, correspondence, funds, appropriations, records, files, and other papers acquired or retained under former 1925 PA 285.

(3) An order or declaratory ruling issued by the commissioner under former 1925 PA 285 that is in effect on the effective date of this act shall continue in effect until modified, suspended, revoked, or repealed by the commissioner.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.204 Immunity.

Sec. 204. The commissioner and the other employees of the office of financial and insurance services are not liable in any civil action for damages for any act done or omitted in performing the functions of their office under this act to the same extent protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415.

History: 2003, Act 215, Eff. June 1, 2004.

490.205 Disclosure of information.

Sec. 205. (1) The commissioner and all deputies, agents, and employees of the office of financial and insurance services shall keep secret all facts and information obtained in the course of their duties, except if the person is required under law to report upon, take official action, or testify in any proceedings regarding the affairs of a credit union. This subsection applies to all former commissioners, deputies, agents, and employees of the office of financial and insurance services.

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, any federal, foreign, or out-of-state credit union regulatory agencies, and is not applicable to disclosures made in

the public interest by the commissioner, at his or her discretion.

History: 2003, Act 215, Eff. June 1, 2004.

490.206 Rules; orders; declaratory rulings.

Sec. 206. The commissioner may promulgate rules or issue orders or declaratory rulings for the enforcement and administration of this act. The commissioner shall promulgate rules and issue orders and declaratory rulings pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2003, Act 215, Eff. June 1, 2004.

490.207 Examination by director; conduct; report; document, material, or information; confidentiality; disclosure; demand for production; request for discovery or disclosure; judicial review; appeal; best practices or other improvements; guidance to promote consistency and due process.

Sec. 207. (1) The director or his or her authorized agent shall 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, at least once every 18 months. The director shall determine whether the domestic credit union transacts its business in the manner prescribed by law and the rules promulgated under law.

(2) In connection with an examination under subsection (1), the director or the director's authorized agent may examine under oath a board member, officer, agent, or employee of a domestic credit union concerning the affairs and business of the domestic credit union. The director or the director's authorized agent may examine an affiliate of a domestic credit union if necessary to fully disclose the relationship between the domestic credit union and the affiliate and the effect of the relationship on the domestic credit union.

(3) The director may examine a branch or branches located in this state of a foreign credit union.

(4) In an examination under this section, the director may use an examination made under the federal credit union act, 12 USC 1751 to 1795k, any other federal law related to the chartering or insuring of financial institutions, or the law of another state governing the activities of foreign credit unions organized in or regulated by that state. The director may require a credit union to furnish a copy of any report required by a federal or state credit union regulatory agency.

(5) The director may contract with another state credit union regulatory agency to assist in the conduct of examinations of domestic credit unions with 1 or more branches located in that other state and in examinations of foreign credit unions with 1 or more branches located in this state.

(6) The contents of a report of examination and examination-related documents, materials, or information that are prepared or obtained under this act remain the property of the director. 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, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(7) The director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (6).

(8) To assist in the performance of the director's duties under this act, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that are subject to subsection (6), 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 shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information the director receives 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 this subsection.

(9) The disclosure of any documents, materials, or information to the director, or the sharing of documents,

materials, or information under subsection (8), is not a waiver of, and shall not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

(10) This article does not prohibit the director from releasing final, adjudicated actions that are open to public inspection under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to a database or other clearinghouse service maintained by the National Credit Union Administration or its affiliates or subsidiaries.

(11) A person to which confidential and privileged documents, materials, or information is disclosed shall not further disseminate those confidential and privileged documents, materials, or information.

(12) 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.

(13) Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, shall be made to the director, and the director shall determine within 7 days whether to disclose the documents, materials, or information under this act. If the director determines that the documents, materials, or information will not be disclosed, the director's decision is subject to judicial review.

(14) The judicial review of a decision of the director under subsection (13) may include in camera judicial review of the confidential and privileged documents, materials, or information. After judicial review, a court may only order disclosure of the portions of the confidential and privileged documents, materials, or information that are relevant and otherwise unobtainable by the requesting party.

(15) The director may immediately appeal any court order described in subsection (14) that compels disclosure of confidential and privileged documents, materials, or information, and the order is automatically stayed pending the outcome of the appeal.

(16) In an addendum to a report of an examination under this section, the director or his or her authorized agent may suggest best practices or other improvements in the operation of a domestic credit union that are not required by law or regulation or to address safety and soundness of the domestic credit union. The manner in which a domestic credit union addresses issues concerning its operations is within the discretion of the credit union in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The director shall not take action against a domestic credit union under this act based on a failure or refusal of a domestic credit union to follow a best practice or other recommended improvement in the operation of the domestic credit union that is suggested informally by an examiner or that is contained in an addendum to a report of examination.

(17) Within 1 year after the effective date of the amendatory act that added this subsection, the director shall issue guidance to promote consistency and due process in the examination process under this section, including, but not limited to, establishing guidelines that define the scope of the examination process and clarify how examination issues will be resolved.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2016, Act 155, Eff. Sept. 7, 2016.

490.208 Application for additional powers by domestic credit unions.

Sec. 208. (1) If 1 or more domestic credit unions apply for authority to exercise powers not specifically authorized by this act, the commissioner may by rule, order, or declaratory ruling authorize domestic credit unions to exercise those powers if the commissioner finds that those powers are appropriate and necessary to compete with other providers of financial services in this state.

(2) In acting under subsection (1), the commissioner shall consider the ability of the domestic credit unions to exercise the additional power in a safe and sound manner, the authority of the domestic credit unions under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on domestic credit union powers contained in this act or in any rules or other law of this state.

(3) The commissioner shall make any rules, declaratory rulings, orders, or findings made under this section available to domestic credit unions.

History: 2003, Act 215, Eff. June 1, 2004.

490.209 Issuance of subpoena by circuit court.

Sec. 209. The commissioner may petition the circuit court for the county of Ingham or the circuit court in the jurisdiction where an examination is being conducted to issue a subpoena on behalf of the commissioner

that requires the person subpoenaed to appear and testify under oath to any matter related to the examination and to produce any relevant documents.

History: 2003, Act 215, Eff. June 1, 2004.

490.210 Notice of charges; issuance and service; statement of facts; hearing; issuance of cease and desist order; enforcement; violation by foreign or federal credit union.

Sec. 210. (1) If in the opinion of the director a domestic credit union is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the domestic credit union or is violating, has violated, or is about to violate a law or rule, the director may issue and serve upon the domestic credit union a notice of charges. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place for a hearing to determine whether the director should issue an order to cease and desist. The hearing shall be held at least 30 and not more than 60 days after service of the notice unless an earlier or later date is set by the director at the request of the domestic credit union. If the domestic credit union does not appear at the hearing by a duly authorized representative, it has consented to the issuance of a cease and desist order.

(2) If a domestic credit union consents to a cease and desist order under subsection (1), or if on the record made at the hearing under subsection (1) the director finds that an unsafe or unsound practice or violation specified in the notice of charges has occurred, the director may issue and serve on the domestic credit union an order to cease and desist from the practice or violation. The order may require the domestic credit union and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) A cease and desist order issued after a hearing under subsection (2) is effective 30 days after the service of the order on the domestic credit union. A cease and desist order issued with the consent of the domestic credit union under subsection (2) is effective at the time specified in the order. A cease and desist order is effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

(4) If the director determines that a foreign credit union that is conducting business in this state is acting in violation of the laws of this state or that the activities of the foreign credit union are being conducted in an unsafe and unsound manner, the director may take any enforcement action that would be permitted under this act if the foreign credit union were a domestic credit union.

(5) If the director determines that a federal credit union is acting in violation of the laws of this state, the director shall notify the National Credit Union Administration and the attorney general.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2016, Act 153, Eff. Sept. 7, 2016.

490.211 Temporary cease and desist order; conditions; injunction for setting aside order.

Sec. 211. (1) If the commissioner determines that a violation or threatened violation or an unsafe or unsound practice or practices specified in the notice of charges served upon a domestic credit union under section 210, or the continuation of the violation or practice, is likely to cause insolvency or substantial dissipation of assets or earnings of the domestic credit union, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the domestic credit union to cease and desist from that violation or practice. The temporary order is effective upon service upon the domestic credit union and is effective and enforceable until a cease and desist order under section 210 is issued and becomes effective or until it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court in a proceeding under subsection (2).

(2) Within 10 days after a domestic credit union has been served with a temporary cease and desist order under subsection (1), the domestic credit union may apply to the circuit court for the county in which the principal office of the domestic credit union is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the proceedings under section 210.

History: 2003, Act 215, Eff. June 1, 2004.

490.212 Notice of intention to remove person from office or to prohibit participation in conduct of affairs; conditions; hearing; order; issuance; basis; enforcement.

Sec. 212. (1) If in the opinion of the commissioner a director, officer, or employee of a domestic credit union, or any other person who participates in the conduct of the affairs of the domestic credit union, has committed any violation of law or rule or of a cease and desist order or other order of the commissioner that has become final, or has engaged or participated in any unsafe or unsound practice in connection with the domestic credit union, or has committed or engaged in any act, omission, or practice that constitutes a breach

of fiduciary duty of that person, and the commissioner determines that the domestic credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its members and depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the person a written notice of intention to remove that person from office.

(2) If in the opinion of the commissioner a director, officer, or employee of a domestic credit union, or another person who participates or has participated in the conduct of the affairs of the domestic credit union, has engaged in conduct or practice with respect to the domestic credit union or another business organization that resulted in substantial financial loss or other damage, or is otherwise unfit to participate in the conduct of the affairs of the domestic credit union, the commissioner may serve upon that person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of any domestic credit union.

(3) If the commissioner considers it necessary for the protection of a domestic credit union or the interests of its shareholders or depositors that a person served with a notice of intention under subsection (1) or (2) is suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the domestic credit union, the commissioner may serve upon that person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct of affairs of the domestic credit union. A suspension or prohibition is effective upon service of the notice and unless stayed by a court in a proceeding under section 213 remains in effect until the administrative proceedings against the person are completed and the commissioner dismisses the charges specified in the notice, or until the effective date of the order if an order of suspension or prohibition is issued. The commissioner shall also serve a copy of the notice on the domestic credit union.

(4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of a domestic credit union shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. The failure of a person to appear at the hearing in person or by a duly authorized representative is consent to the issuance of an order of removal or prohibition. If the person consents, or if after the hearing the commissioner finds that any grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the domestic credit union, as appropriate. An order based on the finding of the commissioner is effective on the thirty-first day after service on the domestic credit union and the person concerned. An order by consent is effective at the time specified in the order. An order is effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.213 Stay of suspension or prohibition.

Sec. 213. Within 10 days after the date a person has been suspended from office or prohibited from participation in the conduct of the affairs of any domestic credit union under section 212(3), the person may apply to the circuit court for Ingham county or the circuit court for the county where the principal office of the domestic credit union is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served on the person under section 212(1) or (2).

History: 2003, Act 215, Eff. June 1, 2004.

490.214 Individual charged with crime involving dishonesty or breach of trust; suspension from office or prohibition from participation in conduct of affairs; finding of not guilty or other disposition.

Sec. 214. (1) If an individual who participates in the conduct of the affairs of a domestic credit union is charged in any information, indictment, warrant, or complaint by a county, state, or federal authority with the commission of, or participation in, a crime that involves dishonesty or breach of trust, the director may, by written notice served on the individual, suspend the individual from office or prohibit the individual from further participation in any manner in the conduct of the affairs of the domestic credit union. The director shall also serve a copy of the suspension or prohibition on the domestic credit union. A suspension or prohibition is in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) If a judgment of conviction with respect to an offense described in subsection (1) is entered against an individual, after the judgment is not subject to further appellate review, the director may issue an order removing the individual from office or prohibiting the individual from further participation in the conduct of the affairs of any domestic credit union. If an order described in this subsection is issued, the individual must

obtain the prior consent of the director before participating in any manner in the conduct of the affairs of any domestic credit union.

(3) An individual who is removed from office under subsection (2) is removed when a copy of the order is served on the domestic credit union.

(4) A finding of not guilty or other disposition of the charge does not preclude the director from instituting proceedings to suspend or remove an individual from office or to prohibit further participation in the affairs of a domestic credit union under section 212(1), (2), or (3).

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004;—Am. 2016, Act 152, Eff. Sept. 7, 2016.

490.215 Administrative hearing.

Sec. 215. (1) The commissioner shall conduct an administrative hearing under section 210 or 212 under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner shall close the hearing to the public unless the commissioner, after fully considering the views of the party who is the subject of the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after notifying the parties that he or she has received the case for final decision, the commissioner shall render a decision that includes findings of fact upon which the decision is predicated and issue and serve upon each party to the proceeding an order consistent with this section.

(2) A party to a proceeding or other person required by an order issued under section 210, 211, 212, or 214 to cease and desist from any of the violations or practices stated in the order, or who is suspended, removed, or prohibited from participation in the conduct of the affairs of the domestic credit union by the order, may request a review by a court of competent jurisdiction of an order issued under subsection (1). The party or person must make his or her request by filing a petition for review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. This subsection does not apply to an order issued by consent.

(3) If a petition for review is not filed within the time period contained in subsection (2), the commissioner may modify, terminate, or set aside the order at any time with appropriate notice. If a petition for review is filed within the time period contained in subsection (2), the commissioner may modify, terminate, or set aside the order with the permission of the court.

(4) Unless otherwise specifically ordered by the court, a proceeding for review under this section does not stay an order issued by the commissioner.

History: 2003, Act 215, Eff. June 1, 2004.

490.216 Enforcement of notice or order; court jurisdiction.

Sec. 216. (1) The commissioner may apply to the circuit court of the county in which the principal office of a domestic credit union is located, or to the circuit court for Ingham county, for the enforcement of any effective and outstanding notice or order issued under section 210, 211, 212, 214, or 215, including any temporary cease and desist order issued under section 211(1).

(2) Only a court described in subsection (1) has jurisdiction to review, modify, enjoin, or stay the issuance or enforcement of any notice or order issued under section 210, 211, 212, 214, or 215 or to review, modify, suspend, terminate, or set aside the notice or order.

History: 2003, Act 215, Eff. June 1, 2004.

490.217 Person subject to notice or order for violation of law; prohibited conduct; violation as misdemeanor; penalty.

Sec. 217. (1) A person who is the subject of an outstanding and effective notice or final order for a violation of section 212(1), (2), or (3), section 214, or for a violation of any other law of this state that contains a grant of enforcement powers to the commissioner or the office of financial and insurance services, shall not do any of the following:

(a) Participate in any manner in the conduct of the affairs of the domestic credit union involved other than voting as an individual member of the domestic credit union.

(b) Serve or act as an official or employee of any domestic credit union.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(3) A person who willfully or intentionally violates any provision of this act for which specific punishment is not provided under this act is guilty of a misdemeanor and shall be imprisoned for not more than 6 months or shall be fined not less than \$500.00 or more than \$5,000.00, or both.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.218 Report from domestic credit union; requirements; notice; failure of domestic credit union to report by deadline; fine.

Sec. 218. (1) The commissioner may require any report from a domestic credit union that in the commissioner's judgment is necessary to fully inform the commissioner about the condition of the domestic credit union. The commissioner shall give the domestic credit union notice in writing that a report is required, describing the report and the deadline for submission. The commissioner shall deliver the notice to the domestic credit union at least 30 days before the deadline for submission, unless the commissioner determines that a shorter period of time is necessary to protect the public interest.

(2) If the domestic credit union fails to deliver to the commissioner a report required under subsection (1) by the deadline for submission, the commissioner may assess an administrative fine against the domestic credit union that does not exceed \$1,000.00 for each day the report is delinquent.

History: 2003, Act 215, Eff. June 1, 2004.

490.219 Delivery of order or written notice; methods.

Sec. 219. If the commissioner is required to serve an order or the commissioner or any person is required to provide a written notice under this act, the commissioner or person may use any delivery method reasonably calculated to give actual notice, including, but not limited to, any of the following:

(a) Physical delivery, in person or by first-class mail or other express delivery service.

(b) If the recipient of the notice agrees to delivery by that method, electronic delivery, by facsimile, electronic transmission, or other means approved by the commissioner.

History: 2003, Act 215, Eff. June 1, 2004.

490.220 Civil fine; assessment; limitation; commencement of action by attorney general; determination of amount of fine; conduct of administrative hearing.

Sec. 220. (1) Subject to subsection (2), if the commissioner finds that a credit union has violated this act or a rule promulgated under this act, the commissioner may assess a civil fine against the credit union or an official of the credit union of not more than \$1,000.00 for each violation, plus the costs of investigation. Each injury to an individual or other person by a violation of this act or a rule is a separate violation.

(2) The commissioner may not assess civil fines under subsection (1) against a credit union or an official of the credit union that in the aggregate are more than \$10,000.00, plus the costs of investigation, for multiple violations of this act or rules promulgated under this act that arise from the same transaction.

(3) The attorney general may commence an action to recover a civil fine assessed under subsection (1) or (2) by and in the name of the commissioner. The attorney general shall collect and enforce a civil fine and may utilize summary proceedings.

(4) In determining the amount of a fine under subsection (1) or (2), the commissioner shall consider the extent to which the violation was a knowing and willful violation and the extent of the injury suffered because of the violation. If the violation was committed by a credit union, the commissioner shall also consider any corrective action taken by the credit union to ensure that the violation will not be repeated and the record of the credit union in complying with this act.

(5) The commissioner shall conduct a proceeding under this section in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2003, Act 215, Eff. June 1, 2004.

490.221 Closure of principal place of business or branch; existence of emergency or legal holiday.

Sec. 221. (1) The director may by order require a domestic credit union to close its principal place of business or 1 or more branches if it appears to the director that the action is required because an emergency exists. The facilities closed shall remain closed until the director by order finds that the emergency is ended. The director shall promptly notify the governor of the issuance of an order under this section.

(2) The director may authorize a domestic credit union to close on a day designated by the president of the United States or the governor of this state as a day of national mourning, rejoicing, or other special observance.

(3) If the director has not issued and does not issue an order of emergency under subsection (1) and the general manager or other designated officer of a domestic credit union determines that an emergency exists, the officer may close the principal place of business or 1 or more branches of the domestic credit union until he or she finds that the emergency is ended.

(4) A domestic credit union closing its principal place of business or 1 or more branches under this section shall give notice to the director, and to any other appropriate governmental entity if required by law.

(5) The period during which the principal place of business of a domestic credit union is closed under this section is considered an emergency condition or a legal holiday, and not a banking day, if the status of the closing as a legal holiday, banking day, or a response to an emergency is relevant to any legal obligation of the domestic credit union.

(6) This section does not alter any obligations of a domestic credit union to its employees or to the employees of another employer under state or federal law.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2016, Act 153, Eff. Sept. 7, 2016.

PART 2 RECEIVERS

490.231 Liquidation; appointment of federal agency as receiver.

Sec. 231. (1) Except as provided in subsection (2), a domestic credit union shall only be liquidated as provided in this part. A receiver or other liquidating agent shall only be appointed for a domestic credit union or its assets and property under this part.

(2) If a federal agency is appointed as receiver of a domestic credit union, the receivership procedures of the federal agency shall govern the receivership.

History: 2003, Act 215, Eff. June 1, 2004.

490.232 Appointment of receiver; conditions; proceeding; bond; reporting schedule; subrogation of federal agency to rights of deposit owners.

Sec. 232. (1) If a domestic credit union refuses to pay its shares, deposits, or obligations in accordance with the terms under which the shares were received or the deposits or obligations were incurred, becomes insolvent, or refuses to submit its books, papers, and records for inspection by the commissioner, or if it appears to the commissioner that the domestic credit union is in an unsafe or unsound condition, the commissioner may either appoint a conservator under section 241 or apply to the circuit court for Ingham county or for the county in which the principal place of business of the domestic credit union is located for the appointment of a receiver for the domestic credit union.

(2) In a proceeding for the appointment of a receiver, the court may act upon the application immediately and without notice to any person. If at any time it appears to the court that the claimed reasons for receivership do not exist, the court shall dissolve the receivership and terminate the proceedings.

(3) An insuring federal agency may act as receiver without bond. All other receivers, with the exception of an employee of the office of financial and insurance services appointed as receiver in his or her official capacity, shall post a bond in an amount determined by the court.

(4) A receiver shall report to the commissioner regarding all matters involving the receivership on a schedule established by the commissioner.

(5) If a domestic credit union is closed and placed in receivership, and the insuring federal agency pays or makes available for payment the insured shares and deposit liabilities of the closed domestic credit union, the agency, whether or not it has become receiver of the domestic credit union, is subrogated to all of the rights of the owners of the deposits against the closed domestic credit union in the same manner and to the same extent as subrogation of the agency is provided for under federal law.

History: 2003, Act 215, Eff. June 1, 2004.

490.233 Receiver; duties; powers.

Sec. 233. (1) Subject to court approval, a receiver appointed under this part shall do all of the following:

(a) Take possession of the books, records, and assets of the domestic credit union and collect all debts, dues, and claims belonging to the domestic credit union.

(b) Sue and defend, compromise, and settle all claims involving the domestic credit union.

(c) Sell all real and personal property of the domestic credit union.

(d) Exercise all fiduciary functions of the domestic credit union as of the date of the commencement of the receivership.

(e) Pay all administrative expenses of the receivership. The administrative expenses are a first charge on the assets of the domestic credit union and the receiver shall pay those expenses before any final distribution or payment of dividends to creditors or members.

(f) Except as provided in this subdivision, pay ratably the debts of the domestic credit union. The receiver may pay any debt that does not exceed \$500.00 in full, but the holder of that debt is not entitled to payment of interest on the debt.

(g) After paying or providing for payment of all the administrative expenses and debts under subdivisions

(e) and (f), pay ratably to the members of the domestic credit union the balance of the net assets of the domestic credit union, in proportion to the number of shares held and owned by each.

(h) Have all the powers of the directors, officers, and members of the domestic credit union necessary to support an action taken on behalf of the domestic credit union.

(i) Hold title to the domestic credit union's property, contracts, and rights of action, beginning on the date the domestic credit union is ordered in receivership.

(2) Subject to court approval, a receiver may do any of the following:

(a) Borrow money as necessary or expedient to aid in the liquidation of the domestic credit union and secure the borrowing by the pledge of or lien, security interest, or mortgage on the assets of the domestic credit union.

(b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the office of financial and insurance services if the receiver considers the employment to be advantageous or desirable. The expense of employing personnel of the office of financial and insurance services is an administrative expense of the liquidation that is payable to the office of financial and insurance services.

(c) Exercise other powers and duties ordered by a circuit court under the laws of this state applicable to the appointment of receivers by the circuit court.

History: 2003, Act 215, Eff. June 1, 2004.

490.234 Voidable transfer or lien; person knowingly implementing voidable transfer or lien; personal liability; prohibitions to voiding otherwise voidable transfer; "preference" defined.

Sec. 234. (1) Except as provided in subsection (3), a transfer of or lien on the property or assets of a domestic credit union is voidable by a receiver appointed under this part if the transfer or lien is 1 or more of the following:

(a) Made or created within 1 year before the date the domestic credit union is ordered into receivership if the receiving transferee or lien holder was at the time an official or employee of the domestic credit union or an affiliate of the domestic credit union.

(b) Made or created on or within 90 days before the date the domestic credit union is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.

(c) Accepted after the domestic credit union is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.

(d) Voidable by the domestic credit union and the domestic credit union may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the domestic credit union was ordered in receivership.

(2) A person acting on behalf of the domestic credit union, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the domestic credit union as a result of the voidable transfer or lien, is personally liable to the receiver for the property or benefit received.

(3) A receiver appointed under this part shall not void an otherwise voidable transfer under this section if any of the following apply:

(a) The transfer or lien does not exceed the value of \$1,000.00.

(b) The transfer or lien was received in good faith by a person who gave value and who is not a person described in subsection (1)(a).

(c) The transfer of lien was intended by the domestic credit union and the transferee or lien holder as, and in fact substantially was, a contemporaneous exchange for new value given to the domestic credit union.

(4) As used in this section, "preference" means a transfer or grant of an interest in the property or assets of the domestic credit union that is either of the following:

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the domestic credit union was or became indebted.

(b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the domestic credit union was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.235 Disposal of obsolete and unnecessary records; maintenance methods; reservation, deposit, and use of assets.

Sec. 235. (1) If approved by the court, a receiver appointed under this part may dispose of records of a domestic credit union in receivership that are obsolete and unnecessary to the continued administration of the receivership proceeding and retain the remaining records of the domestic credit union and the receivership for a period of time as ordered by the court.

(2) A receiver appointed under this part may devise a method for the effective, efficient, and economical maintenance of the records of the domestic credit union and of the receiver's office, including maintaining those records on any medium approved by the court.

(3) A receiver appointed under this part may reserve assets of a liquidated domestic credit union, deposit them in an account, and use them to maintain the records of a liquidated domestic credit union after the closing of the receivership proceeding.

History: 2003, Act 215, Eff. June 1, 2004.

PART 3
CONSERVATORSHIPS

490.241 Appointment of conservator; grounds; bond and security; qualifications; payment of administrative expenses.

Sec. 241. (1) If any of the grounds under section 232 authorizing the appointment of a receiver exist or if the commissioner considers it necessary in order to conserve the assets of a domestic credit union for the benefit of the members and depositors and other creditors of the domestic credit union, the commissioner may appoint a conservator for the domestic credit union and require of the conservator a bond and security as determined by the commissioner.

(2) The commissioner may appoint as conservator an employee of the office of financial and insurance services or any other competent and disinterested person. The conservator shall reimburse the office of financial and insurance services out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as administrative expenses. The conservator shall pay all administrative expenses of the conservatorship out of the assets of the domestic credit union, upon the approval of the commissioner. The administrative expenses are a first charge on the assets of the domestic credit union and the conservator shall pay the administrative expenses in full before any final distribution or payment of dividends to creditors or members.

History: 2003, Act 215, Eff. June 1, 2004.

490.242 Possession of books, records, and assets; rights of parties; discharge of real estate mortgage.

Sec. 242. (1) Under the direction of the commissioner, a conservator appointed under this part shall take possession of the books, records, and assets of the domestic credit union and take any action necessary to conserve the assets of the domestic credit union pending liquidation under part 2 of this article or further disposition of its business as provided by law. The conservator has all the rights, powers, and privileges of a receiver appointed under part 2 of this article, except the power to liquidate a domestic credit union, and is subject to those obligations and penalties to which a receiver is subject that are not inconsistent with this part with respect to conservators.

(2) While a conservator remains in possession of the domestic credit union under this part, the rights of all parties with respect to the domestic credit union, subject to the other provisions of this part with respect to conservators, are the same as if a receiver had been appointed under part 2 of this article.

(3) A conservator appointed under this part may execute the discharge of any real estate mortgage held as part of the assets of the domestic credit union.

History: 2003, Act 215, Eff. June 1, 2004.

490.243 Withdrawal by members and depositors and payment to other creditors; availability of amounts; receipt of shares and deposits; actions; return of control to credit union board; notice.

Sec. 243. (1) While a domestic credit union is in conservatorship under this part, the commissioner may require the conservator to set aside and make available for withdrawal by members and depositors and payment to other creditors, on a ratable basis, amounts that in the opinion of the commissioner may be used safely for this purpose.

(2) The commissioner may permit a conservator appointed under this part to receive shares and deposits.

(3) Shares and deposits received while a domestic credit union is in conservatorship under this part are not subject to any limitation as to payment or withdrawal. The conservator shall segregate those shares and deposits and any new assets acquired on account of the shares and deposits and shall not use those shares, deposits, and assets to liquidate any indebtedness of the domestic credit union existing at the time that the conservator was appointed or for any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the domestic credit union existing at the time the conservator was appointed.

(4) Any action taken by a conservator under subsection (3) may not remain in effect for more than 15 days after the date that the conservator returns control of the domestic credit union to the credit union board.

(5) A conservator appointed under this part shall keep any shares and deposits received while the domestic credit union is in conservatorship in cash, invested in the direct obligations of the United States, or deposited in depository institutions designated by the commissioner.

(6) Before returning control of a domestic credit union to the credit union board, a conservator appointed under this part shall publish a notice, in form approved by the commissioner, stating the date on which the affairs of the domestic credit union will be returned to the credit union board and that the provisions of subsection (3) will not apply after 15 days from that date. The conservator shall send a copy of the notice to every person who purchased shares or deposited money in the domestic credit union after the appointment of the conservator and before the time when control of the domestic credit union is returned to the credit union board.

History: 2003, Act 215, Eff. June 1, 2004.

490.244 Authority of commissioner to borrow money; conditions; secured loans.

Sec. 244. With the prior approval of the commissioner, a conservator appointed under this part may borrow money necessary or expedient to aid in the operation or reorganization of the domestic credit union and may secure the loans by the pledge of or lien, security interest, or mortgage on the assets of the domestic credit union.

History: 2003, Act 215, Eff. June 1, 2004.

490.245 Termination of conservatorship; determination by commissioner; resumption of business transactions by domestic credit union; appointment of receiver; liquidation.

Sec. 245. (1) If satisfied that it may be done safely and that it is in the public interest, the commissioner may terminate a conservatorship under this part and permit the domestic credit union to resume the transaction of its business subject to terms, conditions, restrictions, and limitations that he or she prescribes.

(2) Subject to subsection (3), if the commissioner determines that it is in the public interest, the commissioner may terminate a conservatorship under this part and apply for the appointment of a receiver for the domestic credit union as provided in part 2 of this article.

(3) If the commissioner determines that liquidation of a domestic credit union is in the public interest, the commissioner shall terminate a conservatorship under this part and apply for the appointment of a receiver for the domestic credit union as provided in part 2 of this article.

History: 2003, Act 215, Eff. June 1, 2004.

PART 4

INVOLUNTARY MERGERS OR SALES

490.251 Merger or sale; determination by commissioner; order; “distressed credit union” defined.

Sec. 251. (1) The commissioner may order the merger or sale of a domestic credit union under this section if the commissioner determines that all of the following are met:

(a) The domestic credit union is in danger of insolvency, in an unsafe or unsound condition, or in danger of becoming in an unsafe or unsound condition.

(b) That expeditious action is required by the commissioner to deal with a condition described in subdivision (a).

(c) That other actions available to the commissioner under this act are not reasonably available to the commissioner with respect to the credit union described in subdivision (a).

(2) The commissioner may initiate and order an involuntary merger of a distressed credit union with another credit union if both of the following are met:

(a) The other credit union agrees to a merger.

(b) If the other credit union is a foreign credit union, it is authorized to complete the merger under any state

or federal law applicable to it.

(3) The commissioner may initiate and order an involuntary merger of a distressed credit union with a financial institution other than a credit union if all of the following are met:

(a) The commissioner is unable to complete an involuntary merger under subsection (2).

(b) The other financial institution agrees to a merger.

(c) The other financial institution is authorized to complete the merger under any state or federal law applicable to it.

(4) As used in this section, "distressed credit union" means a domestic credit union that the commissioner determines is insolvent, in danger of insolvency, in an unsafe or unsound condition, or in danger of becoming in an unsafe or unsound condition under subsection (1).

History: 2003, Act 215, Eff. June 1, 2004.