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 BILL ANALYSIS

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Senate Bills 490 through 496 (as introduced 5-15-03)
Sponsor: Senator Alan Sanborn (Senate Bill 490)
Senator Wayne Kuipers (Senate Bill 491)
Senator Jim Barcia (Senate Bill 492)
Senator Bev Hammerstrom (Senate Bill 493)
Senator Burton Leland (Senate Bill 494)
Senator Gerald Van Woerkom (Senate Bill 495)
Senator Shirley Johnson (Senate Bill 496)

Committee: Banking and Financial Institutions

Date Completed: 5-22-03

CONTENT

Senate Bill 496 would repeal the credit union Act, Public Act 285 of 1925, and create the "Credit Union Act" to provide for the regulation of credit unions. Among other things, the bill would do the following:

- Allow a credit union's board to identify mixed fields of membership.
- Require the Commissioner of the Office of Financial and Insurance Services (OFIS) to examine a credit union at least once every 18 months.
- Authorize a credit union to perform certain financial services for any person.
- Identify factors that a credit union board could consider in making loans.
- Allow a credit union to lend up to \$1,000, payable within 30 days, to its members.
- Provide for the confidentiality of credit union information and documents.
- Allow a credit union to conduct its business by mail or electronically.
- Allow notices to be given electronically.

The bill also would authorize the Commissioner to do the following:

- Suspend or remove a credit union official from office if he or she were charged with or convicted of a felony involving dishonesty or breach of trust.
- Require a credit union to close in an emergency.
- Revoke the authority of a foreign credit

union to conduct business in Michigan.
-- Assess civil fines against a credit union or a credit union official.

Senate Bills 490 through 495 would amend various laws to replace references to Public Act 285 of 1925 with references to the proposed "Credit Union Act". The bills also would refer to a "domestic credit union" rather than a "credit union" or "state-chartered credit union", and would update references to the Banking Code and the Savings and Loan Act.

Senate Bill 490 would amend Public Act 156 of 1851, which defines the powers and duties of county boards of commissioners; Senate Bill 491 would amend Public Act 322 of 1978, which authorizes financial institutions to make electronic funds transfer terminals available to consumers; Senate Bill 492 would amend the Motor Vehicle Sales Act; Senate Bill 493 would amend the Michigan Consumer Protection Act; Senate Bill 494 would amend the Michigan Penal Code; and Senate Bill 495 would amend Public Act 43 of 1973, which permits associations, institutions, and credit unions to process or handle food stamps. The bills are tie-barred to Senate Bill 496.

An overview of Senate Bill 496 follows.

Domestic & Foreign Credit Unions

Public Act 285 of 1925 defines "credit union" as a cooperative, nonprofit association incorporated under the Act for the purposes of encouraging thrift among its members,

creating a source of credit at rates of interests not greater than allowed by law, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition. The term includes a credit union incorporated under the Act, under the laws of another U.S. state or territory, or under Federal law.

The bill would distinguish between a "domestic" and a "foreign" credit union. "Domestic credit union" would mean a cooperative, nonprofit entity organized under the proposed Act for the purposes of encouraging thrift among its members, providing a variety of financial services to its members, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition. "Foreign credit union" would mean a credit union organized under the laws of another U.S. state or territory or a Federal credit union.

Credit Union Operations, Organization, & Structure

Field of Membership. Currently, credit union organization is limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Public Act 285 allows the organization of a community credit union whose field of membership is composed of individuals who have a common bond based on relatively close geographical proximity to one another, personal acquaintance among the residents, and the existence of a community of interests, activities, and objectives.

The bill would require a domestic credit union board to establish the credit union's field of membership. The field of membership would have to consist of one or more groups of people, where those within any one group, but not all groups, shared a common bond. The credit union board could identify and approve one or more groups of people, and their immediate family members, whose common bond was based on occupation; association; residence, employment, religious participation, or school enrollment within one or more geographical areas; or any other criteria established by the OFIS Commissioner by order or declaratory ruling. A credit union

that established or revised its field of membership would have to submit the field of membership to the Commissioner for approval. The Commissioner could disapprove of an application only on the basis of safety and soundness of the domestic credit union.

Confidentiality. The bill would prohibit a domestic credit union officer, committee member, or employee from disclosing any confidential information related to the conduct of the credit union's business, including personnel matters, matters involving actual or potential litigation or real estate transactions, or other matters related to strategic business endeavors, and information concerning transactions between the domestic credit union and either its members or other people, except as otherwise provided by law or to disclose information necessary to conduct the business of the credit union.

Except as otherwise provided under the bill, any documents, materials, or other information in the possession or control of OFIS that was furnished by a domestic or foreign credit union or an employee or representative acting on behalf of a credit union, or obtained by the Commissioner in an investigation or examination conducted under the proposed Act, would be confidential and privileged, would not be subject to the Freedom of Information Act, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in any private civil action.

A report of a credit union examination prepared or obtained by OFIS would be its sole property. Any copy provided to the credit union board or any credit union official would be solely for the purpose of management oversight. A credit union, or any person in possession of a report of an examination, could not disclose the report or its contents without the Commissioner's express prior written consent.

The Commissioner, and any person who received documents, materials, or other information while acting under the Commissioner's authority, would not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other protected information and reports.

Other Provisions. The bill would do all of the following:

- Provide authority for credit unions to use trade names.
- Allow a domestic credit union with a principal place of business in Michigan to conduct its business solely by mail or through electronic communication, without having a physical location where members could transact credit union business.
- Establish minimum qualifications for a domestic credit union director, credit committee member, or supervisory committee member.
- Allow a domestic credit union board to delegate to the credit union's general manager certain duties, such as determining interest rates, hiring employees and fixing their compensation, and making and selling investments according to board policies.
- Require a domestic credit union board to meet at least once every 62 days and a minimum of nine times per year, rather than monthly as is currently required.
- Allow a domestic credit union's bylaws to provide that a person could continue as a member of the credit union even if he or she were no longer in the field of membership.
- Allow a domestic credit union to accept the estate of an individual as a member, if that individual had been a member of the credit union at the time of his or her death.
- Allow a domestic credit union board to terminate the membership, or some or all services of membership, of a member who caused a loss to the credit union, committed fraud against the credit union, or violated any law on the credit union's premises.
- Allow the Commissioner, by order or declaratory ruling, to permit a domestic credit union to use one or more forms of secondary capital other than capital stock.

Credit Union Powers

Universal Services. The bill would establish the powers of a domestic credit union. Among other things, the bill would allow a domestic credit union to perform any of the following services for any person:

- Cash advances.
- Funds transfers.

- Cashing and selling checks and drafts.
- Signature guarantee services.
- Selling and cashing money orders and travelers checks.
- Buying and selling foreign currency in exchange for U.S. currency.
- Selling or otherwise providing any goods or services with a value of \$150 or less, unless prohibited by law, and any other goods and services authorized by the Commissioner.
- Other services specified by an order or declaratory ruling of the Commissioner.

Short-Term Loans. The bill would allow a domestic credit union to enter into a loan agreement with a credit union member for any amount up to \$1,000 and payable within 30 days after the delivery of the loan proceeds to the borrower. The credit union could charge a fee that would be in addition to interest authorized by law and would not be part of the interest collected or agreed to be paid on loans within the meaning of a Michigan law limiting the rate of interest in a transaction.

Service Organization Loans & Investment. Presently, a credit union may organize, invest in, and make loans to corporations or other organizations that engage in activities incidental to the conduct of a credit union or in activities that further or facilitate the purposes of a credit union or that furnish services to credit unions. The bill would re-enact this provision. Currently, a credit union must notify the Commissioner of an investment or loan of this type that would cause the aggregate of these investments and loans to exceed 2% of the credit union's shares, deposits, undivided earnings, and reserves. The investments and loans may not, in the aggregate, exceed 5% of the shares, deposits, undivided earnings, and reserves. The bill specifies instead that these types of investments and loans could not exceed 15% of a domestic credit union's assets and that, without prior approval of the Commissioner, a credit union's loans and investments of these types could not, in the aggregate, exceed 7% of its assets.

Other Provisions. As currently provided, the bill would allow a domestic credit union to make secured or unsecured loans at a fixed or variable interest rate, and take and hold any real or personal property as security. The bill specifies that, in establishing an interest rate,

the credit union could consider the collateral provided, the borrower's creditworthiness, the loan's duration, and any other factor the credit union reasonably determined to affect the interest rate.

The bill also would allow a domestic credit union to make charitable contributions, if the individual contributions and their aggregate amount were reasonable.

Commissioner Powers

Suspension/Removal of Officials. Under the bill, if a person participating in the conduct of the affairs of a domestic credit union were charged with a felony involving dishonesty or breach of trust in any information, indictment, warrant, or complaint by a county, State, or Federal authority, the Commissioner could suspend the person from office or prohibit him or her from further participating in any manner in conducting the credit union's affairs. If the person were convicted, after the judgment was no longer subject to appellate review, the Commissioner could remove the person from office or prohibit him or her from further participating in the credit union's affairs. An acquittal or other disposition would not preclude the Commissioner from taking these actions.

Closure. The bill would allow the Commissioner to require a domestic credit union to close its principal place of business or one or more branches, if it appeared that the action was required because an emergency existed. If the Commissioner did not issue an order of emergency, and the credit union's general manager or other designated officer determined that an emergency existed, the officer could close the credit union's principal place of business or one or more branches until he or she found that the emergency had ended.

The Commissioner also could authorize a domestic credit union to close on a day designated by the U.S. President or the Michigan Governor as a day of national mourning, rejoicing, or other special observance.

Under the bill, "emergency" would mean a condition, event, or occurrence that met both of the following:

- It interfered or could interfere with the conduct of normal business operations, or posed an imminent or existing threat to the safety and security of a person or property, at the principal place of business or one or more branches.
- It resulted from a fire, flood, earthquake, hurricane, tornado, wind, rain, snowstorm, labor dispute or strike, power failure, transportation failure, fuel shortage, interruption of a communication facility, shortage of housing, epidemic or other natural or manmade catastrophe, riot, civil commotion, or any other act of lawlessness or violence.

Revocation of Authority. The bill provide that if the Commissioner believed that the foreign credit union was engaging, had engaged, or was about to engage in an unsafe or unsound practice in conducting the business of a credit union branch located in Michigan or was violating, had violated, or was about to violate a State or Federal law, rule, or regulation, the Commissioner could either notify the State or Federal regulatory authority with jurisdiction over the foreign credit union, or issue and serve upon the foreign credit union a notice of intent to revoke its authority to do business in Michigan.

Other Provisions. The bill would create the credit union division with OFIS.

The bill would require the Commissioner, or his or her authorized agent, to examine the condition and affairs of each domestic credit union at least once every 18 months. (Currently, an examination must be conducted annually.)

The Commissioner, or any person required under the proposed Act to provide a written notice, could use any delivery method reasonably calculated to give actual notice, including physical delivery, in person or by first-class mail or other express delivery service; or, if the recipient agreed, electronic delivery by facsimile, electronic transmission, or other means approved by the Commissioner.

The Commissioner could assess a civil fine of up to \$1,000 against a credit union or credit union official for each violation, if the Commissioner found that a credit union violated the proposed Act or a rule

promulgated under it. Each injury to an individual or other person by a violation would be a separate violation. The Commissioner could not assess fines that, in the aggregate, were more than \$10,000, plus the costs of investigation, for multiple violations that arose from the same transaction.

MCL 46.12a (S.B. 490)
488.2 & 488.3 (S.B. 491)
492.136 (S.B. 492)
445.904 (S.B. 493)
750.315a & 750.376a (S.B. 494)
400.171 (S.B. 495)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.