



SENATE BILL No. 975

April 23, 1996, Introduced by Senators BOUCHARD, BENNETT and ROGERS and referred to the Committee on Financial Services.

A bill to amend section 16 of Act No. 285 of the Public Acts of 1925, entitled as amended

"An act to provide for the organization, operation, and supervision of credit unions; to provide for the conversion of a state credit union into a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States and for the conversion of a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States into a state credit union; and to provide for the merger of credit unions organized and supervised under the laws of this state, credit unions organized and supervised under the laws of any other state or territory of the United States, and federal credit unions,"

as amended by Act No. 246 of the Public Acts of 1992, being section 490.16 of the Michigan Compiled Laws; and to add section 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 16 of Act No. 285 of the Public Acts of 1925, as amended by Act No. 246 of the Public Acts of 1992, being

1 section 490.16 of the Michigan Compiled Laws, is amended and
2 section 9a is added to read as follows:

3 SEC. 9A. (1) AN OFFICIAL OF A CREDIT UNION SHALL DISCHARGE
4 THE DUTIES OF HIS OR HER POSITION IN GOOD FAITH AND WITH THAT
5 DEGREE OF DILIGENCE, CARE, AND SKILL THAT AN ORDINARILY PRUDENT
6 PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN A LIKE
7 POSITION. IN DISCHARGING HIS OR HER DUTIES, AN OFFICIAL MAY RELY
8 UPON THE OPINION OF LEGAL COUNSEL FOR THE CREDIT UNION, UPON THE
9 REPORT OF AN INDEPENDENT APPRAISER SELECTED WITH REASONABLE CARE
10 BY THE BOARD OR BY AN OFFICER OF THE CREDIT UNION, OR UPON FINAN-
11 CIAL STATEMENTS OF THE CREDIT UNION REPRESENTED TO HIM OR HER TO
12 BE CORRECT BY THE GENERAL MANAGER OR THE OFFICER OF THE CREDIT
13 UNION HAVING CHARGE OF ITS RECORDS, OR AS STATED IN A WRITTEN
14 REPORT BY AN INDEPENDENT PUBLIC OR CERTIFIED PUBLIC ACCOUNTANT OR
15 FIRM OF ACCOUNTANTS FAIRLY TO REFLECT THE FINANCIAL CONDITION OF
16 THE CREDIT UNION.

17 (2) A CREDIT UNION MAY INDEMNIFY A PERSON WHO WAS OR IS A
18 PARTY OR IS THREATENED TO BE MADE A PARTY TO A THREATENED, PEND-
19 ING, OR COMPLETED ACTION, SUIT, OR PROCEEDING, WHETHER CIVIL,
20 CRIMINAL, ADMINISTRATIVE, OR INVESTIGATIVE AND WHETHER FORMAL OR
21 INFORMAL, OTHER THAN AN ACTION BY OR IN THE RIGHT OF THE CREDIT
22 UNION, BY REASON OF THE FACT THAT HE OR SHE IS OR WAS AN OFFI-
23 CIAL, EMPLOYEE, OR AGENT OF THE CREDIT UNION OR IS OR WAS SERVING
24 AT THE REQUEST OF THE CREDIT UNION AS AN OFFICIAL, EMPLOYEE, OR
25 AGENT OF 1 OR MORE CREDIT UNIONS OR OTHER ENTERPRISES, WHETHER
26 FOR PROFIT OR NOT, AGAINST EXPENSES, INCLUDING ATTORNEY FEES,
27 JUDGMENTS, PENALTIES, FINES, AND AMOUNTS PAID IN SETTLEMENT

1 ACTUALLY AND REASONABLY INCURRED BY HIM OR HER IN CONNECTION WITH
2 THE ACTION, SUIT, OR PROCEEDING IF THE PERSON ACTED IN GOOD FAITH
3 AND IN A MANNER HE OR SHE REASONABLY BELIEVED TO BE IN OR NOT
4 OPPOSED TO THE BEST INTERESTS OF THE CREDIT UNION OR ITS MEMBERS,
5 AND WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, IF THE
6 PERSON HAD NO REASONABLE CAUSE TO BELIEVE HIS OR HER CONDUCT WAS
7 UNLAWFUL. THE TERMINATION OF ANY ACTION, SUIT, OR PROCEEDING BY
8 JUDGMENT, ORDER, SETTLEMENT, OR CONVICTION, OR UPON A PLEA OF
9 NOLO CONTENDERE OR ITS EQUIVALENT, DOES NOT CREATE A PRESUMPTION
10 THAT THE PERSON DID NOT ACT IN GOOD FAITH AND IN A MANNER THAT HE
11 OR SHE REASONABLY BELIEVED TO BE IN OR NOT OPPOSED TO THE BEST
12 INTERESTS OF THE CREDIT UNION OR ITS MEMBERS AND WITH RESPECT TO
13 A CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE
14 THAT HIS OR HER CONDUCT WAS UNLAWFUL.

15 (3) A CREDIT UNION MAY INDEMNIFY A PERSON WHO WAS OR IS A
16 PARTY TO OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED,
17 PENDING, OR COMPLETED ACTION OR SUIT BY OR IN THE RIGHT OF THE
18 CREDIT UNION TO PROCURE A JUDGMENT IN ITS FAVOR BY REASON OF THE
19 FACT THAT HE OR SHE IS OR WAS AN OFFICIAL, EMPLOYEE, OR AGENT OF
20 THE CREDIT UNION OR IS OR WAS SERVING AT THE REQUEST OF THE
21 CREDIT UNION AS AN OFFICIAL, EMPLOYEE, OR AGENT OF 1 OR MORE
22 CREDIT UNIONS OR OTHER ENTERPRISES, WHETHER FOR PROFIT OR NOT,
23 AGAINST EXPENSES, INCLUDING ACTUAL AND REASONABLE ATTORNEY FEES
24 AND AMOUNTS PAID IN SETTLEMENT INCURRED BY THE PERSON IN CONNEC-
25 TION WITH THE ACTION OR SUIT IF THE PERSON ACTED IN GOOD FAITH
26 AND IN A MANNER THE PERSON REASONABLY BELIEVED TO BE IN OR NOT
27 OPPOSED TO THE BEST INTERESTS OF THE CREDIT UNION OR ITS

1 MEMBERS. INDEMNIFICATION SHALL NOT BE MADE FOR A CLAIM, ISSUE,
2 OR MATTER IN WHICH THE PERSON HAS BEEN FOUND LIABLE TO THE CREDIT
3 UNION UNLESS AND ONLY TO THE EXTENT THAT THE COURT IN WHICH THE
4 ACTION OR SUIT WAS BROUGHT HAS DETERMINED UPON APPLICATION THAT,
5 DESPITE THE ADJUDICATION OF LIABILITY BUT IN VIEW OF ALL CIRCUM-
6 STANCES OF THE CASE, THE PERSON IS FAIRLY AND REASONABLY ENTITLED
7 TO INDEMNIFICATION FOR THE EXPENSES THAT THE COURT CONSIDERS
8 PROPER.

9 (4) TO THE EXTENT THAT AN OFFICIAL, EMPLOYEE, OR AGENT OF A
10 CREDIT UNION HAS BEEN SUCCESSFUL ON THE MERITS OR OTHERWISE IN
11 DEFENSE OF AN ACTION, SUIT, OR PROCEEDING DESCRIBED IN SUBSECTION
12 (8), OR IN DEFENSE OF ANY CLAIM, ISSUE, OR MATTER IN THE ACTION,
13 SUIT, OR PROCEEDING, HE OR SHE SHALL BE INDEMNIFIED AGAINST
14 EXPENSES, INCLUDING ACTUAL AND REASONABLE ATTORNEY FEES, INCURRED
15 BY HIM OR HER IN CONNECTION WITH THE ACTION, SUIT, OR PROCEEDING
16 AND AN ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE THE MANDA-
17 TORY INDEMNIFICATION PROVIDED IN THIS SECTION.

18 (5) AN INDEMNIFICATION UNDER SUBSECTION (2) OR (3), UNLESS
19 ORDERED BY A COURT, SHALL BE MADE BY THE CREDIT UNION ONLY AS
20 AUTHORIZED IN THE SPECIFIC CASE UPON A DETERMINATION THAT INDEM-
21 NIFICATION OF AN OFFICIAL, EMPLOYEE, OR AGENT IS PROPER BECAUSE
22 HE OR SHE HAS MET THE APPLICABLE STANDARD OF CONDUCT SET FORTH IN
23 SUBSECTION (2) OR (3). THIS DETERMINATION SHALL BE MADE IN ANY
24 OF THE FOLLOWING WAYS:

25 (A) BY A MAJORITY VOTE OF A QUORUM OF THE BOARD CONSISTING
26 OF DIRECTORS WHO WERE NOT PARTIES TO THE ACTION, SUIT, OR
27 PROCEEDING.

1 (B) IF THE QUORUM DESCRIBED IN SUBDIVISION (A) IS NOT
2 OBTAINABLE, THEN BY A MAJORITY VOTE OF A COMMITTEE OF DIRECTORS
3 WHO ARE NOT PARTIES TO THE ACTION. THE COMMITTEE SHALL CONSIST
4 OF NOT LESS THAN 2 DISINTERESTED DIRECTORS.

5 (C) BY INDEPENDENT LEGAL COUNSEL IN A WRITTEN OPINION.

6 (D) BY THE MEMBERS.

7 (6) IF A PERSON IS ENTITLED TO INDEMNIFICATION UNDER SUBSEC-
8 TION (2) OR (3) FOR A PORTION OF EXPENSES, INCLUDING ATTORNEY
9 FEES, JUDGMENTS, PENALTIES, FINES, AND AMOUNTS PAID IN SETTLE-
10 MENT, BUT NOT FOR THE TOTAL AMOUNT OF THE EXPENSES, THE CREDIT
11 UNION MAY INDEMNIFY THE PERSON FOR THE PORTION OF THE EXPENSES,
12 JUDGMENTS, PENALTIES, FINES, OR AMOUNTS PAID IN SETTLEMENT FOR
13 WHICH THE PERSON IS ENTITLED TO BE INDEMNIFIED.

14 (7) EXPENSES INCURRED IN DEFENDING A CIVIL OR CRIMINAL
15 ACTION, SUIT, OR PROCEEDING DESCRIBED IN SUBSECTION (2) OR (3)
16 MAY BE PAID BY THE CREDIT UNION IN ADVANCE OF THE FINAL DISPOSI-
17 TION OF THE ACTION, SUIT, OR PROCEEDING UPON RECEIPT OF AN UNDER-
18 TAKING BY OR ON BEHALF OF AN OFFICIAL, EMPLOYEE, OR AGENT TO
19 REPAY THE EXPENSES IF IT IS ULTIMATELY DETERMINED THAT THE PERSON
20 IS NOT ENTITLED TO BE INDEMNIFIED BY THE CREDIT UNION. THE
21 UNDERTAKING SHALL BE BY UNLIMITED GENERAL OBLIGATION OF THE
22 PERSON ON WHOSE BEHALF ADVANCES ARE MADE BUT NEED NOT BE
23 SECURED.

24 (8) THE INDEMNIFICATION OR ADVANCEMENT OF EXPENSES PROVIDED
25 UNDER SUBSECTIONS (2) TO (7) IS NOT EXCLUSIVE OF OTHER RIGHTS TO
26 WHICH A PERSON SEEKING INDEMNIFICATION OR ADVANCEMENT OF EXPENSES
27 MAY BE ENTITLED UNDER THE BYLAWS OR A CONTRACTUAL AGREEMENT. THE

1 TOTAL AMOUNT OF EXPENSES ADVANCED OR INDEMNIFIED FROM ALL SOURCES
2 SHALL NOT EXCEED THE AMOUNT OF ACTUAL EXPENSES INCURRED BY THE
3 PERSON SEEKING INDEMNIFICATION OR ADVANCEMENT OF EXPENSES. THE
4 INDEMNIFICATION PROVIDED FOR IN SUBSECTIONS (2) TO (7) CONTINUES
5 AS TO A PERSON WHO CEASES TO BE AN OFFICIAL, EMPLOYEE, OR AGENT
6 AND SHALL INURE TO THE BENEFIT OF THE HEIRS, EXECUTORS, AND
7 ADMINISTRATORS OF THE PERSON.

8 (9) FOR PURPOSES OF SUBSECTIONS (2) TO (8), REFERENCES TO
9 THE CREDIT UNION INCLUDE ALL OTHER CREDIT UNIONS WHICH BECOME
10 RELATED TO THE CREDIT UNION BY A CONSOLIDATION OR MERGER AND THE
11 RESULTING OR CONTINUING CREDIT UNION, SO THAT A PERSON WHO IS OR
12 WAS AN OFFICIAL, EMPLOYEE, OR AGENT OF THE CREDIT UNION WHICH WAS
13 CONSOLIDATED OR MERGED INTO THE CREDIT UNION OR IS OR WAS SERVING
14 AT THE REQUEST OF THE CREDIT UNION WHICH WAS CONSOLIDATED OR
15 MERGED INTO THE CREDIT UNION AS AN OFFICIAL, PARTNER, TRUSTEE,
16 EMPLOYEE, OR AGENT OF 1 OR MORE OTHER CREDIT UNIONS, OR OTHER
17 ENTERPRISES, WHETHER FOR PROFIT OR NOT, SHALL STAND IN THE SAME
18 POSITION UNDER THIS SECTION WITH RESPECT TO THE RESULTING OR CON-
19 TINUING CREDIT UNION AS HE OR SHE WOULD IF HE OR SHE HAD SERVED
20 THE RESULTING OR CONTINUING CREDIT UNION IN THE SAME CAPACITY.

21 Sec. 16. (1) Loans to members shall be made subject to the
22 conditions contained in the bylaws. A borrower may repay his or
23 her loan in whole or in part any day the credit union is open for
24 business.

25 (2) Except when OTHERWISE PROVIDED IN the bylaws, ~~of a~~
26 ~~credit union otherwise provide,~~ a director or member of either
27 the credit committee or supervisory committee shall not borrow

1 from the credit union in which he or she holds office beyond the
2 amount of his or her holdings in shares and deposits.

3 (3) ~~A~~ AT ITS OPTION, A credit union ~~, through provision~~
4 ~~in its bylaws, at its option,~~ may permit its directors, credit
5 committee members, and supervisory committee members to borrow in
6 excess of their share and deposit holdings on ~~such~~ terms and
7 conditions and in ~~such~~ amounts as the bylaws may provide. A
8 director, officer, credit committee member, or supervisory com-
9 mittee member shall not act as a cosigner, guarantor, or indorser
10 for borrowers other than members of his or her immediate family.

11 (4) Loans to directors or members of the credit committee or
12 supervisory committee shall be made in the same manner as are
13 loans to other members, except that the applicant shall not pass
14 on his or her own loan. ~~The~~ EXCEPT TO THE EXTENT THAT THE
15 LOANS ARE SECURED BY A SPECIFIC PLEDGE OF SHARES OR DEPOSITS, THE
16 aggregate amount of loans to or guaranteed by directors and mem-
17 bers of the credit committee and supervisory committee ~~except to~~
18 ~~the extent they are secured by a specific pledge of shares or~~
19 ~~deposits~~ shall not exceed 10% of the share capital of a credit
20 union and shall be shown in aggregate as a separate item in the
21 balance sheet of the credit union and in all reports rendered by
22 the credit union.

23 (5) Upon written application by a member, the credit union
24 may approve a line of credit or other open-end credit agreement,
25 and may grant loan advances to the member within the limit of
26 that open-end credit agreement. If an open-end credit agreement
27 has been approved, an additional loan application shall not be

1 required by this act as long as the aggregate indebtedness does
2 not exceed the approved limit or a higher approved limit as sub-
3 sequently established by the credit union. At its option, the
4 credit union may require reapplication for an open-end credit
5 agreement, either periodically or as circumstances warrant.
6 EXCEPT TO THE EXTENT THAT IT HAS CONTRACTED TO THE CONTRARY, A
7 CREDIT UNION MAY UNILATERALLY INCREASE THE APPROVED LIMIT OR MAY
8 INCREASE THE APPROVED LIMIT UPON THE REQUEST OF THE MEMBER IN ANY
9 FORM THAT THE CREDIT UNION CONSIDERED SUFFICIENT.

10 (6) A credit union may participate in loans to credit union
11 members jointly with other credit unions, credit union organiza-
12 tions, or other financial organizations. If a credit union
13 incorporated under this act originates ~~such~~ a loan, it shall
14 retain an interest in the loan of at least 10%.

15 (7) A credit union may participate in ~~any~~ A guaranteed
16 loan program of the federal or state government under the terms
17 and conditions specified in the law under which such a program is
18 provided.