

CREDIT UNION ACT (EXCERPT)
Act 215 of 2003

PART 7
ADMINISTRATION

490.381 Disclosure of confidential information.

Sec. 381. Except as otherwise required by law, a director, officer, member of a committee, or employee of a domestic credit union shall not disclose any confidential information related to the conduct of the business of the domestic credit union that he or she has a duty not to disclose, including, but not limited to, personnel matters, matters involving actual or potential litigation or real estate transactions, or other matters related to strategic business endeavors of the domestic credit union, and shall not disclose any information concerning transactions between the domestic credit union and either its members or other persons. This subsection does not apply to any disclosure necessary to the conduct of the business of the domestic credit union.

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

490.382 Fiscal year; accounting principles.

Sec. 382. (1) A domestic credit union shall use the calendar year as its fiscal year.

(2) A domestic credit union shall follow generally accepted accounting principles in its accounting, unless a different accounting standard is required by state or federal statute, rule, or regulation.

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

490.383 Discharge of duties by officers; standards; indemnification.

Sec. 383. (1) An official of a domestic credit union shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, an official may rely upon the opinion of legal counsel for the domestic credit union, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the domestic credit union, or upon financial statements of the domestic credit union represented to him or her to be correct by the general manager or the officer of the domestic credit union having charge of its records, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the domestic credit union.

(2) A domestic credit union may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or on behalf of the domestic credit union, because he or she is or was an official, employee, or agent of the domestic credit union or is or was serving at the request of the domestic credit union as an official, employee, or agent of 1 or more domestic credit unions or other profit or nonprofit enterprises, for attorney fees, judgments, penalties, fines, amounts paid in settlement, and other expenses actually and reasonably incurred by him or her in connection with the action, suit, or proceeding. A domestic credit union may only indemnify a person under this subsection if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the domestic credit union or its members, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or a plea of nolo contendere or its equivalent, does not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the domestic credit union or its members and with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(3) A domestic credit union may indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit, by or on behalf of the domestic credit union to procure a judgment in its favor by reason of the fact that he or she is or was an official, employee, or agent of the domestic credit union or is or was serving at the request of the domestic credit union as an official, employee, or agent of 1 or more domestic credit unions or other profit or nonprofit enterprises, for actual and reasonable attorney fees, amounts paid in settlement incurred by the person in connection with the action or suit, and other expenses. A domestic credit union may only indemnify a person under this subsection if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the domestic credit union or its members and a domestic credit union shall not indemnify a person for a claim, issue, or matter in which the person has been found liable to the domestic credit union unless and

only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses that the court considers proper.

(4) To the extent that an official, employee, or agent of a domestic credit union is successful on the merits or otherwise in defense of an action, suit, or proceeding described in subsection (8), or in defense of any claim, issue, or matter in the action, suit, or proceeding, the domestic credit union shall indemnify the person for actual and reasonable attorney fees and other expenses incurred by him or her in connection with the action, suit, or proceeding and any action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(5) Unless ordered by a court, a domestic credit union shall indemnify a person under subsection (2) or (3) only for the action, suit, or proceeding specified by the domestic credit union in the determination described in this subsection and only if the domestic credit union obtains from 1 of the following a determination that indemnification of the person is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (2) or (3):

(a) The credit union board, by a majority vote of a quorum of the board consisting of directors who are or were not parties to the action, suit, or proceeding.

(b) If a quorum described in subdivision (a) is not obtainable, a committee of directors that consists of 2 or more directors who are or were not parties to the action, by majority vote.

(c) Independent legal counsel in a written opinion.

(d) The members.

(6) If a person is entitled to indemnification under subsection (2) or (3) for a portion of attorney fees, judgments, penalties, fines, amounts paid in settlement, and other expenses, but not for the total amount of the expenses, the domestic credit union may indemnify the person for the portion of the attorney fees, judgments, penalties, fines, amounts paid in settlement, or other expenses for which the person is entitled to indemnification.

(7) A domestic credit union may pay expenses incurred by a person in defending a civil or criminal action, suit, or proceeding described in subsection (2) or (3) before the final disposition of the action, suit, or proceeding if the domestic credit union receives an unlimited, general, secured, or unsecured guarantee by or on behalf of the person to repay the expenses if it is ultimately determined that the person is not entitled to indemnification from the domestic credit union.

(8) An indemnification or advance of expenses provided under subsections (2) to (7) is not exclusive of other rights to which a person seeking indemnification or advancement of expenses is entitled under the bylaws or an agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking the indemnification or advance of expenses. An indemnification provided under subsections (2) to (7) continues after the person ceases to be an official, employee, or agent and inures to the benefit of the heirs, executors, and administrators of the person.

(9) As used in subsections (2) to (8), "domestic credit union" includes all other credit unions that become related to a domestic credit union by a consolidation or merger and the resulting or continuing credit union. A person who is or was an official, employee, or agent of a domestic credit union that is consolidated or merged into the domestic credit union or is or was serving at the request of a credit union that is consolidated or merged into the domestic credit union as an official, partner, trustee, employee, or agent of 1 or more other credit unions, or other profit or nonprofit enterprises is in the same position under this section with respect to the resulting or continuing credit union as he or she would if he or she had served the resulting or continuing credit union in the same capacity.

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

490.384 Participation in deliberation or board action.

Sec. 384. (1) Unless the matter involves setting dividends, loan rates, or fees for services or other general policy applicable to all members of the domestic credit union, a director, committee member, officer, or employee of a domestic credit union shall not in any manner, directly or indirectly, participate in the deliberation or board action on any matter that affects his or her pecuniary interest or the pecuniary interest of an entity other than the domestic credit union in which he or she is interested.

(2) If 1 or more directors are disqualified from participating in a matter before the credit union board pursuant to subsection (1), the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified directors, may by majority vote exercise all the powers of the board with respect to the matter under consideration. If all of the directors are disqualified, the members of the domestic credit union shall act on the matter.

(3) If 1 or more committee members are disqualified from participating in a matter before the committee pursuant to subsection (1), the remaining qualified committee members, if constituting a quorum with the disqualified committee members, may by majority vote exercise all the powers of the committee with respect to the matter under consideration. If all of the committee members are disqualified, the credit union board shall act on the matter.

(4) As used in this section, an individual is "interested" in an entity if he or she meets any of the following:

(a) Serves as a director, officer, or employee of the entity.

(b) Has a business or deposit relationship with the entity.

(c) Has an ownership interest in the entity that is more than a 10% equity interest.

(d) Has a business, financial, or familial relationship with an individual who he or she knows has a pecuniary interest in the entity.

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

490.385 Payment to person claiming interest in account; restrictions.

Sec. 385. (1) A domestic credit union may refuse to make a payment from an account to a person claiming an interest in the account if the domestic credit union is uncertain under the agreement governing the account of who is entitled to receive that payment or if the domestic credit union has actual knowledge of a dispute between any account owners, beneficiaries with present vested rights in the account, or other persons concerning their respective ownership to the money in the account, the proposed withdrawal, or any previous withdrawals from the account.

(2) If a domestic credit union refuses to make a payment under subsection (1), the domestic credit union may notify the account owners, beneficiaries with present vested rights in the account, and other persons claiming an interest in the account in writing of the basis for its refusal and may refuse to make the payment until all interested parties consent in writing to the requested payment or a court with jurisdiction orders the domestic credit union to make the payment. The domestic credit union is not liable for any damages resulting from an action taken under this subsection.

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

490.386 Establishment and maintenance of reserves.

Sec. 386. (1) A domestic credit union shall establish and maintain reserves in an amount that qualifies the domestic credit union for insurance of its accounts under federal law and meets any requirement of the commissioner.

(2) A domestic credit union shall establish allowances for loan and lease losses account based on its reasonably foreseeable loan and lease losses and shall maintain the account in accordance with generally accepted accounting principles. A domestic credit union shall charge a loan or lease or any portion of a loan or lease to the allowance for loan and lease losses account if any of the following occur:

(a) The credit union board considers the loan or lease or any portion of a loan or lease uncollectible.

(b) The loan or lease is 12 or more contractual payments delinquent, the borrower has not made a contractual payment in the past 90 days, and the domestic credit union has not instituted judicial proceedings to collect the loan or lease.

(c) The commissioner orders the domestic credit union to charge the loan or lease or any portion of a loan or lease to the allowance for loan and lease losses account.

(3) A domestic credit union shall establish special reserves to protect the interests of members if required by rule of the commissioner or if the credit union board or the commissioner decide that a special reserve is necessary to protect the interests of the members concerning a specific event.

(4) This section applies to a corporate credit union organized under this act only to the extent the commissioner determines it is necessary to protect the interests of the members and other share and deposit account holders of the corporate credit union.

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

490.387 Insurance of member share and deposit accounts.

Sec. 387. (1) A domestic credit union that is not a corporate credit union shall apply for and maintain insurance of member share accounts and member deposit accounts from an agency of the federal government that provides that insurance.

(2) A credit union that is denied a commitment for insurance of its share and deposit accounts by the insuring federal agency or that is given notice by the insuring federal agency of the agency's intent to terminate insurance of the credit union's shares and deposits shall either dissolve, merge with another credit union that is insured by an agency of the federal government, or apply in writing to the commissioner within

30 days after the denial or notice for additional time to obtain an insurance commitment.

(3) The commissioner shall grant a credit union described in subsection (2) 1 or more additional periods of time to obtain or reinstate an insurance commitment if the commissioner receives satisfactory evidence that the credit union has made or is making a substantial effort to meet the conditions required by the insuring federal agency for issuance of an insurance commitment.

(4) A credit union may contract with an insurance carrier licensed to do business in this state for insurance of the balances of its accounts that exceed the amount insured by the insuring federal agency.

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