

The People of the State of Michigan enact:

205.24 Failure or refusal to file return or pay tax; assessment; notice; penalty; interest; waiver; penalty for failure or refusal to file informational report; failure to pay estimated tax payment; waiver of interest and penalty.

Sec. 24. (1) If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued on or before February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued after February 28, 2003, a penalty of 5% of the tax shall be added if the failure is for not more than 2 months, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 25%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid. After June 30, 1994, the penalty prescribed by this subsection shall not be imposed until the department submits for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, a rule defining what constitutes reasonable cause for waiver of the penalty under subsection (4), which definition shall include illustrative examples.

(3) If a person is required to remit tax due pursuant to section 19(2) and fails or refuses to pay the tax within the time specified, a penalty of 0.167% of the tax shall be added for each day during which the failure continues or the tax and penalty are not paid as follows:

(a) For notices of intent to assess issued on or before February 28, 2003, to a maximum of 50% of the tax.

(b) For notices of intent to assess issued after February 28, 2003, to a maximum of 25% of the tax.

(4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the state treasurer or an authorized representative of the state treasurer shall waive the penalty prescribed by subsection (2).

(5) For failure or refusal to file an information return or other informational report required by a tax statute, within the time specified, a penalty of \$10.00 per day for each day for each separate failure or refusal may be added. The total penalty for each separate failure or refusal shall not exceed \$400.00.

(6) If a taxpayer fails to pay an estimated tax payment as may be required by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, a penalty shall not be imposed if the taxpayer was not required to make estimated tax payments in the taxpayer's immediately preceding tax year.

(7) Notwithstanding any other provision of this act, for any return or tax remittance due on August 15, 2003 that was filed or remitted not later than August 22, 2003, the

department shall waive all interest and penalty for the failure to file or remit for the period of August 15, 2003 through August 22, 2003.

This act is ordered to take immediate effect.

Approved November 14, 2003.

Filed with Secretary of State November 14, 2003.

[No. 202]

(HB 4714)

AN ACT to amend 1976 PA 451, entitled “An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts,” by amending section 1525 (MCL 380.1525), as amended by 1995 PA 289.

The People of the State of Michigan enact:

380.1525 Funds to support professional development and education; use; approval of annual plan; disapproval of funding.

Sec. 1525. (1) State and federal funds appropriated by the legislature to support professional development and education may be used for the following:

(a) Professional development programs for administrators and teachers. These programs shall emphasize the improvement of teaching and pupils’ learning of academic core curriculum objectives, as measured by Michigan educational assessment program and other criterion-reference assessments; collaborative decision-making; site-based management; the process of school improvement; instructional leadership; and the use of data and assessment instruments to improve teaching and learning for all pupils.

(b) A biennial education policy leadership institute. The state board shall organize and convene a biennial education policy leadership institute for the governor, the lieutenant governor, the state board, the state superintendent, the legislature, and the presidents of the state board approved teacher education institutions, and the staff of each as may be considered appropriate, to examine the most current public education policy issues and initiatives and the appropriate role of policy leaders.

(c) A statewide academy for school leadership established by the state board.

(d) A principal leadership academy. The department, in collaboration with statewide associations of school principals, shall establish the principal leadership academy. The principal leadership academy shall consist of training for school principals that is conducted by other school principals who have a record of demonstrated success in improving pupil

performance. The department shall solicit input from school district superintendents and intermediate superintendents to compile a list of successful school principals who would likely be effective in conducting the training at the principal leadership academy and shall select school principals to conduct the training from this list. The training shall include all aspects of successful school leadership, including at least all of the following:

- (i) Strategies for increasing parental involvement.
 - (ii) Strategies for engaging community support and involvement.
 - (iii) Creative problem-solving.
 - (iv) Financial decision-making.
 - (v) Management rights and techniques.
 - (vi) Other strategies for improving school leadership to achieve better pupil performance.
- (e) Community leadership development. The state board, in conjunction with intermediate school districts, shall conduct a leadership development training program in each school district for members of the community.
- (f) Promotion of high educational standards. The state board, in collaboration with the business community and educators, shall coordinate and assist in the promotion of a statewide public education and information program concerning the need to achieve world class educational standards in the public schools of this state.
- (g) Sabbatical leaves. School districts shall provide sabbatical leaves for up to 1 academic year for selected master teachers who aid in professional development.
- (h) Any other purpose authorized in the appropriation for professional development in the state school aid act of 1979.
- (2) In order to receive professional development funding described in subsection (1), each school district and intermediate school district shall prepare and submit to the state board for approval an annual professional development plan.
- (3) The state board may disapprove for state funding proposed professional development that the state board finds to be 1 or more of the following:
- (a) Not in furtherance of core academic curriculum needs.
 - (b) Not constituting serious, informed innovation.
 - (c) Of generally inferior overall quality or depth regardless of who sponsors or conducts the education or training.
 - (d) Not in compliance with the requirements of section 1526.

This act is ordered to take immediate effect.

Approved November 14, 2003.

Filed with Secretary of State November 14, 2003.

[No. 203]

(HB 4613)

AN ACT to amend 2001 PA 181, entitled "An act to authorize the board of a school district to award high school diplomas to World War II veterans under certain circumstances;

and to prescribe duties and responsibilities of certain state officers and officials,” by amending the title and section 1 (MCL 35.341).

The People of the State of Michigan enact:

TITLE

An act to authorize the board of a school district to award high school diplomas to World War II veterans and Korean conflict veterans under certain circumstances; and to prescribe duties and responsibilities of certain state officers and officials.

35.341 High school diploma to qualified military veteran; “qualified military veteran” defined.

Sec. 1. (1) The board of a school district may award a high school diploma to a qualified military veteran.

(2) As used in this act, “qualified military veteran” means an individual who meets all of the following requirements:

(a) The military veteran is at least 65 years of age, if living, or had attained at least 65 years of age, if deceased.

(b) Before graduation from a high school, the military veteran enlisted in or was drafted into the armed forces of the United States during World War II between December 16, 1940 and December 31, 1946 or during the Korean conflict between June 27, 1950 and January 31, 1955.

(c) At the time he or she was drafted into or enlisted in the armed forces of the United States, the military veteran was enrolled in a high school in the school district to which the application is made.

(d) The military veteran did not graduate from high school.

(e) The military veteran served under honorable conditions during World War II or the Korean conflict.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 204]

(HB 4660)

AN ACT to amend 1939 PA 3, entitled “An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential

energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,” (MCL 460.1 to 460.10cc) by adding section 9c.

The People of the State of Michigan enact:

460.9c Customer on active duty in military; shut-off protection.

Sec. 9c. (1) Except as otherwise provided by this section, a provider of electric or gas service shall not discontinue the service to the residence of a qualifying customer who has made a filing under this section.

(2) In addition to protection provided under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, a qualifying customer may apply for shut-off protection for electric or gas service by notifying the provider that he or she is in need of assistance because of a reduction in household income as the result of a call to active duty status in the military.

(3) A provider of service may request verification of the call to active duty status from the qualifying customer.

(4) A qualifying customer may receive shut-off protection from the provider of service under this section for up to 90 days. Upon application to the provider, the provider may grant the qualifying customer 1 or more extensions.

(5) A qualifying customer receiving assistance under this section shall notify the provider of the end of the call to active duty status as soon as that status is known.

(6) Unless waived by the provider, the shut-off protection provided under this section does not void or limit the obligation of the qualifying customer to pay for electric or gas services received during the time of assistance.

(7) A provider shall do all of the following:

(a) Establish a repayment plan requiring minimum monthly payments that allows the qualifying customer to pay any past due amounts over a reasonable time period not to exceed 1 year.

(b) Provide a qualifying customer with information regarding any governmental, provider, or other assistance programs.

(c) Provide qualifying customers with access to existing information on ways to minimize or conserve their service usage.

(8) This section does not affect or amend any commission rules or orders pertaining to billing standards. If the terms and conditions under subsection (7)(a) are not followed by the qualifying customer, the provider may follow the procedures in the commission's rules on consumer standards and billing practices for electric and gas residential service.

(9) As used in this section, a “qualifying customer” means all of the following:

(a) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is called to full-time active military service by the president of the United States or the governor of this state during a time of declared national or state emergency or war.

(b) Assistance is needed by the residential household to maintain electric and gas service.

(c) The residential household has notified the provider of the need for assistance and, if required, has provided verification of the call to active duty status.

This act is ordered to take immediate effect.
Approved November 25, 2003.
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[No. 205]

(HB 4950)

AN ACT to amend 1947 PA 359, entitled “An act to authorize the incorporation of charter townships; to provide a municipal charter therefor; to prescribe the powers and functions thereof; and to prescribe penalties and provide remedies,” (MCL 42.1 to 42.34) by adding section 10a.

The People of the State of Michigan enact:

42.10a Township manager; employment; service; duties.

Sec. 10a. If a township has not appointed a township superintendent under section 10, the township board may employ a township manager who shall serve at the pleasure of the township board and perform such duties lawfully delegated to the manager by the township board. The duties may include those that are delegated by law to another township official if written consent has been granted by that official.

This act is ordered to take immediate effect.
Approved November 25, 2003.
Filed with Secretary of State November 26, 2003.

[No. 206]

(HB 4283)

AN ACT to amend 1991 PA 179, entitled “An act to regulate and insure the availability of certain telecommunication services; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; to repeal certain acts and parts of acts; and to repeal this act on a specific date,” (MCL 484.2101 to 484.2701) by adding section 314a.

The People of the State of Michigan enact:

484.2314a Customer on active duty in military; shut-off protection.

Sec. 314a. (1) Except as otherwise provided by this section, a telecommunication provider shall not discontinue basic local exchange telecommunication service to the residence of a qualifying customer who has made a filing under this section.

(2) A qualifying customer may apply for shut-off protection for telecommunication service under this section by notifying the provider that the qualifying customer is in need of assistance caused by a reduction in household income through a call to active duty status in the military.

(3) A provider of service may request verification of the call to active duty status from the qualifying customer. A provider of service may also request verification of the qualified customer's reduction in household income.

(4) A provider of service may require restrictions or elimination of calling features or toll service as a condition of granting a qualifying customer's request for shut-off protection under this section.

(5) A qualifying customer may receive shut-off protection from the provider of service under this section for up to 90 days. Upon application to the provider, the provider may grant the qualifying customer 1 or more extensions.

(6) A qualifying customer receiving assistance under this section shall notify the provider of the end of the call to active duty status as soon as that status is known.

(7) Unless waived by the provider, the shut-off protection provided under this section does not void or limit the obligation of the qualifying customer to pay for telecommunication services received during the time of assistance.

(8) Within 48 hours of receiving all information requested of the qualifying customer, a provider shall do all of the following:

(a) Create a repayment plan requiring minimum monthly payments that allows the qualifying customer to pay any past due amounts over a reasonable time period not to exceed 1 year.

(b) Provide a qualifying customer with information regarding any governmental, provider, or other assistance programs.

(9) This section does not affect or amend any commission rules or orders pertaining to billing standards. If the terms and conditions arranged by the provider with the qualifying customer under subsection (8) are not followed by the customer, then the provider shall follow procedures as set forth in the commission's billing standards for basic residential telecommunication service.

(10) As used in this section, "qualifying customer" means all of the following:

(a) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is called to active military service by the president of the United States or the governor of this state during a time of declared national or state emergency or war.

(b) Assistance is needed by the residential household to maintain telecommunication service.

(c) The residential household notifies the provider of the need for assistance and provides verification of the call to active duty status.

This act is ordered to take immediate effect.

Approved November 25, 2003.

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[No. 207]**(HB 5054)**

AN ACT to amend 1980 PA 299, entitled “An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 1117 (MCL 339.1117), as amended by 1984 PA 25.

The People of the State of Michigan enact:

339.1117 Rendering of barber services off premises; requirements; demonstration permit.

Sec. 1117. (1) Except as otherwise provided in this section, barber services shall only be rendered in premises licensed by the department under this article. A barber may render services outside of a barbershop to a patient in a hospital, nursing home, home for the aged, or similar facility or to a person in the person’s home if it is impractical or unsafe for the patient or person to travel due to frailty, age, injury, or illness.

(2) The department may issue a demonstration permit, valid for not longer than 1 year, to allow demonstrations on premises not in use as a barbershop. The holder of a demonstration permit shall maintain health, safety, and sanitation standards as set forth in rules authorized under this article. The department may issue a demonstrator permit, valid for no longer than 1 week, to a person not licensed in this state to perform barbering services solely for the purposes of demonstration, provided that the demonstrator is duly authorized to perform barbering services under the laws of another state, jurisdiction, or country.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 208]**(HB 4907)**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies

and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 602 (MCL 500.602), as amended by 1989 PA 35, and by adding section 603.

The People of the State of Michigan enact:

500.602 "Life" insurance, "transaction of life insurance," and "life insurance companies" defined.

Sec. 602. (1) "Life" insurance is insurance upon the lives and health of persons and every insurance pertaining thereto, and to grant, purchase, or dispose of annuities. Notwithstanding any other provision of law, life insurance includes insurance upon the lives of persons which insurance prepays the death benefit.

(2) Transaction of life insurance includes the issuance of policies of life and endowment insurance and contracts for the payment of annuities and pure endowments, and contracts supplemental to those that contain only those provisions relating to accident and sickness insurance as provide additional benefits for death or dismemberment or loss of sight by accident or as operate to safeguard those policies or contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

(3) All corporations, associations, partnerships, or individuals, doing business in this state under any charter, compact, agreement, or statute of this or any other state, involving an insurance, guaranty, contract, or pledge, for the payment of annuities or endowments, or for the payment of money to families, or representatives of policy or certificate holders or members, are considered life insurance companies within the meaning of the laws relating to life insurance within this state.

500.603 Accelerated benefits; qualifying event.

Sec. 603. (1) As used in this section:

(a) “Accelerated benefits” means benefits payable under a life insurance contract to a policyowner or certificateholder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider that reduce the death benefit otherwise payable under the life insurance contract and that are payable upon the occurrence of a single qualifying event that results in the payment of a benefit amount fixed at the time of acceleration.

(b) “Qualifying event” means 1 or more of the following:

(i) A medical condition that would result in a drastically limited life span as specified in the contract.

(ii) A medical condition that has required or requires extraordinary medical intervention including, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die.

(iii) A condition that usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life.

(iv) A medical condition that would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, but are not limited to, coronary artery disease resulting in an acute infarction or requiring surgery, permanent neurological deficit resulting from cerebral vascular accident, end stage renal failure, acquired immune deficiency syndrome, or other medical conditions that the commissioner has approved for any particular filing.

(v) Other qualifying events that the commissioner approves for a particular filing.

(2) An accelerated benefit rider and a life insurance policy with accelerated benefit provisions are primarily mortality risks rather than morbidity risks and are life insurance benefits subject to all of the following:

(a) Chapters 40 and 44.

(b) Shall provide the option to take the benefit as a lump sum and not as an annuity contingent upon the life of the insured.

(c) Shall have no restrictions on the use of the proceeds.

(d) If any death benefit remains after payment of an accelerated benefit, shall not affect the accidental death benefit provision, if any, by the payment of the accelerated benefit.

(e) Shall include the terminology “accelerated benefit” in the descriptive title and not be described or marketed as long-term care insurance or as providing long-term care benefits.

(3) Except as otherwise provided, the insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions is required to obtain from an assignee or irrevocable beneficiary a signed acknowledgment of concurrence for payout prior to the payment of the accelerated benefit. If the insurer making the accelerated benefit is itself the assignee under the policy, an acknowledgment is not required.

(4) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall provide a disclosure statement at the time of application and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. If a policyowner or certificateholder of an accelerated

benefit rider or life insurance policy with accelerated benefit provisions requests an acceleration, the insurer shall send a statement to the policyowner or certificateholder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements, may be taxable, and that assistance should be sought from a personal tax advisor. If a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificateholder and irrevocable beneficiary. If the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder to reflect, or shall notify the certificateholder under a group policy of, any new, reduced in-force face amount of the contract.

(5) A written disclosure, including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant for an accelerated benefit rider or life insurance policy with accelerated benefit provisions. The description shall include an explanation of any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgment of the disclosure shall be signed by the applicant and writing agent. For a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within the free look period. For group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(6) If there is a premium or cost of insurance charge, the insurer shall give the applicant for an accelerated benefit rider or life insurance policy with accelerated benefit provisions a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application. For a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered. For group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(7) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions with financing options other than as described in subsection (12)(b) shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any additional premium or cost of insurance charge if the certificateholder is required to pay a charge. Upon request of the commissioner, an insurer shall furnish an actuarial demonstration disclosing the method of arriving at its cost for the accelerated benefit.

(8) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any administrative expense charge if the certificateholder is required to pay the charge.

(9) An accelerated benefit provision shall be effective as follows:

(a) On the effective date of the policy or rider for accidents.

(b) No more than 30 days after the effective date of the policy or rider for illness.

(10) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions may offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

(11) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall not unfairly discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. An insurer shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

(12) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions may do any of the following:

(a) Require a premium charge or cost of insurance charge for the accelerated benefit if based on sound actuarial principles. For group insurance, the additional cost may also be reflected in the experience rating.

(b) Pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of the current yield on 90-day treasury bills or the current maximum statutory adjustable policy loan interest rate.

(c) Accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of the current yield on 90-day treasury bills or the current maximum statutory adjustable policy loan interest rate. The interest rate accrued on the portion of the lien that is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

(13) Except as otherwise provided in this subsection, if an accelerated benefit on an accelerated benefit rider or life insurance policy with accelerated benefit provisions is payable, there shall be no more than a pro rata reduction in the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment. Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums, and any accrued interest may be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans may be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

(14) If payment of an accelerated benefit on an accelerated benefit rider or life insurance policy with accelerated benefit provisions results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

(15) For an accelerated benefit rider or life insurance policy with accelerated benefit provisions, a qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable. These descriptions and the actuarial memorandum shall be made available for examination by the commissioner upon request.

(16) If benefits are provided through the acceleration of benefits under group or individual life policies or riders to an accelerated benefit rider or life insurance policy with

accelerated benefit provisions, policy reserves shall be determined in accordance with section 834. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American academy of actuaries. The actuary shall follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover policies upon which no claim has yet arisen and policies upon which an accelerated claim has arisen. For policies and certificates that provide actuarially equivalent benefits, additional reserves do not need to be established. Policy liens and policy loans, including accrued interest, represent assets of the insurer for statutory reporting purposes. For a policy on which the policy lien exceeds the policy's statutory reserve liability, the excess shall be held as a nonadmitted asset.

This act is ordered to take immediate effect.

Approved November 25, 2003.

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[No. 209]

(HB 4263)

AN ACT to amend 1961 PA 120, entitled "An act to authorize the development or redevelopment of principal shopping districts and business improvement districts; to permit the creation of certain boards; to provide for the operation of principal shopping districts and business improvement districts; to provide for the creation, operation, and dissolution of business improvement zones; and to authorize the collection of revenue and the bonding of certain cities for the development or redevelopment projects," by amending the title and sections 1, 2, 4, 5, and 6 (MCL 125.981, 125.982, 125.984, 125.985, and 125.986), the title as amended by 2001 PA 260, sections 1, 2, and 5 as amended by 2001 PA 261, section 4 as amended by 1999 PA 49, and section 6 as amended by 1992 PA 146.

The People of the State of Michigan enact:

TITLE

An act to authorize the development or redevelopment of principal shopping districts and business improvement districts; to permit the creation of certain boards; to provide for the operation of principal shopping districts and business improvement districts; to provide for the creation, operation, and dissolution of business improvement zones; and to authorize the collection of revenue and the bonding of certain local governmental units for the development or redevelopment projects.

125.981 Definitions; principal shopping district; business district; creation, appointment, and composition of board.

Sec. 1. (1) As used in this chapter:

(a) "Assessable property" means real property in a district area other than all of the following:

(i) Property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(ii) Property owned by the federal, a state, or a local unit of government where property is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(iii) One or more classes of property owners whose property meets all of the following conditions:

(A) Is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, other than property identified in subparagraph (ii).

(B) As a class has been determined by the legislative body of the local governmental unit not to be benefited by a project for which special assessments are to be levied.

(b) “Business improvement district” means 1 or more portions of a local governmental unit or combination of contiguous portions of 2 or more local governmental units that are predominantly commercial or industrial in use.

(c) “District” means a business improvement district or a principal shopping district.

(d) “Highways” means public streets, highways, and alleys.

(e) “Local governmental unit” means a city, village, or urban township.

(f) “Principal shopping district” means a portion of a local governmental unit designated by the governing body of the local governmental unit that is predominantly commercial and that contains at least 10 retail businesses.

(g) “Urban township” means a township that is an urban township as defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152, and is a township located in a county with a population of more than 750,000.

(2) A local governmental unit with a master plan for the physical development of the local governmental unit that includes an urban design plan designating a principal shopping district or includes the development or redevelopment of a principal shopping district, or 1 or more local governmental units that establish a business improvement district by resolution, may do 1 or more of the following:

(a) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, open, widen, extend, realign, pave, maintain, or otherwise improve highways and construct, reconstruct, maintain, or relocate pedestrian walkways.

(b) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, prohibit or regulate vehicular traffic where necessary to carry out the purposes of the development or redevelopment project.

(c) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, regulate or prohibit vehicular parking on highways.

(d) Acquire, own, maintain, demolish, develop, improve, or operate properties, off-street parking lots, or structures.

(e) Contract for the operation or maintenance by others of off-street parking lots or structures owned by the local governmental unit, or appoint agents for the operation or maintenance.

(f) Construct, maintain, and operate malls with bus stops, information centers, and other buildings that will serve the public interest.

(g) Acquire by purchase, gift, or condemnation and own, maintain, or operate real or personal property necessary to implement this section.

(h) Promote economic activity in the district by undertakings including, but not limited to, conducting market research and public relations campaigns, developing, coordinating, and conducting retail and institutional promotions, and sponsoring special events and related activities. A business may prohibit the use of its name or logo in a public relations campaign, promotion, or special event or related activity for the district.

(i) Provide for or contract with other public or private entities for the administration, maintenance, security, operation, and provision of services that the board determines are a benefit to a district within the local governmental unit.

(3) A local governmental unit that provides for ongoing activities under subsection (2)(h) or (i) shall also provide for the creation of a board for the management of those activities.

(4) One member of the board of the principal shopping district shall be from the adjacent residential area, 1 member shall be a representative of the local governmental unit, and a majority of the members shall be nominees of individual businesses located within the principal shopping district. The board shall be appointed by the chief executive officer of the local governmental unit with the concurrence of the legislative body of the local governmental unit. However, if all of the following requirements are met, a business may appoint a member of the board of a principal shopping district, which member shall be counted toward the majority of members required to be nominees of businesses located within the principal shopping district:

(a) The business is located within the principal shopping district.

(b) The principal shopping district was designated by the governing body of a local governmental unit after July 14, 1992.

(c) The business is located within a special assessment district established under section 5.

(d) The special assessment district is divided into special assessment rate zones reflecting varying levels of special benefits.

(e) The business is located in the special assessment rate zone with the highest special assessment rates.

(f) The square footage of the business is greater than 5.0% of the total square footage of all businesses in that special assessment rate zone.

(5) If the boundaries of the principal shopping district are the same as those of a downtown district designated under 1975 PA 197, MCL 125.1651 to 125.1681, the governing body may provide that the members of the board of the downtown development authority, which manages the downtown district, shall compose the board of the principal shopping district, in which case subsection (4) does not apply.

(6) The members of the board of a business improvement district shall be determined by the local governmental unit as provided in this subsection. The board of a business improvement district shall consist of all of the following:

(a) One representative of the local governmental unit appointed by the chief executive officer of the local governmental unit with the concurrence of the legislative body of the local governmental unit in which the business improvement district is located. If the business improvement district is located in more than 1 local governmental unit, then 1 representative from each local governmental unit in which the business improvement district is located shall serve on the board as provided in this subdivision.

(b) Other members of the board shall be nominees of the businesses and property owners located within the business improvement district. If a class of business or property owners, as identified in the resolution described in subsection (8), is projected to pay more than 50% of the special assessment levied that benefits property in a business improvement district for the benefit of the business improvement district, the majority of the members of the board of the business improvement district shall be nominees of the business or property owners in that class.

(7) A local governmental unit may create 1 or more business improvement districts.

(8) If 1 or more local governmental units establish a business improvement district by resolution under subsection (2), the resolution shall identify all of the following:

(a) The geographic boundaries of the business improvement district.

(b) The number of board members in that business improvement district.

(c) The different classes of property owners in the business improvement district.

(d) The class of business or property owners, if any, who are projected to pay more than 50% of the special assessment levied that benefits property in that business improvement district.

125.982 Principal shopping district project or business improvement project; methods or criteria for financing costs.

Sec. 2. (1) The cost of the whole or any part of a principal shopping district project or business improvement district project as authorized in this chapter may be financed by 1 or more of the following methods:

(a) Grants and gifts to the local governmental unit or district.

(b) Local governmental unit funds.

(c) The issuance of general obligation bonds of the local governmental unit subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(d) The issuance of revenue bonds by the local governmental unit under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, or under any other applicable revenue bond act. The issuance of the bonds shall be limited to the part or parts of the district project that are public improvements.

(e) The levying of special assessments against land or interests in land, or both.

(f) Any other source.

(2) Beginning January 1, 2000, the proceeds of a bond, note, or other obligation issued to finance a project authorized under this chapter shall be used for capital expenditures, costs of a reserve fund securing the bonds, notes, or other obligations, and costs of issuing the bonds, notes, or other obligations. The proceeds of the bonds, notes, or other obligations shall not be used for operational expenses of a district.

125.984 Development or redevelopment of district; single improvement.

Sec. 4. The development or redevelopment of a district, including the various phases of the development or redevelopment, is 1 project and, in the discretion of the governing body of the local governmental unit, may be financed as a single improvement.

125.985 Special assessments; levy; installment payments; maximum annual amounts; adjustment; special assessment bonds; full faith and credit; maturity; statutory or charter provisions; review; marketing and development plan.

Sec. 5. (1) If a local governmental unit elects to levy special assessments to defray all or part of the cost of the district project, then the special assessments shall be levied pursuant to applicable statutory or charter provisions or, if there are no applicable statutory or charter provisions, pursuant to statutory or charter provisions applicable to local governmental unit street improvements. If a local governmental unit charter does not authorize special assessments for the purposes set forth in this chapter, the charter

provisions authorizing special assessments for street improvements are made applicable to the purposes set forth in this chapter, without amendment to the charter. The total amount assessed for district purposes may be made payable in not more than 20 annual installments as determined by the governing body of the local governmental unit, the first installment to be payable in not more than 18 months after the date of the confirmation of the special assessment roll.

(2) A special assessment shall be levied against assessable property on the basis of the special benefits to that parcel from the total project. There is a rebuttable presumption that a district project specially benefits all assessable property located within the district.

(3) This subsection applies to a principal shopping district only if the principal shopping district is designated by the governing body of a local governmental unit after July 14, 1992. The special assessments annually levied on a parcel under this chapter shall not exceed the product of \$10,000.00 and the number of businesses on that parcel. A business located on a single parcel shall not be responsible for a special assessment in excess of \$10,000.00 annually. When the special assessment district is created, a lessor of a parcel subject to a special assessment may unilaterally revise an existing lease to a business located on that parcel to recover from that business all or part of the special assessment, as is proportionate considering the portion of the parcel occupied by the business.

(4) The \$10,000.00 maximum amounts in subsection (3) shall be adjusted each January 1, beginning January 1, 1994, pursuant to the annual average percentage increase or decrease in the Detroit consumer price index for all items as reported by the United States department of labor. The adjustment for each year shall be made by comparing the Detroit consumer price index for the 12-month period ending the preceding October 31 with the corresponding Detroit consumer price index of 1 year earlier. The percentage increase or decrease shall then be multiplied by the current amounts under subsection (3) authorized by this section. The product shall be rounded up to the nearest multiple of 50 cents and shall be the new amount.

(5) The local governmental unit may issue special assessment bonds in anticipation of the collection of the special assessments for a district project and, by action of its governing body, may pledge its full faith and credit for the prompt payment of the bonds. Special assessment bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The last maturity on the bonds shall be not later than 2 years after the due date of the last installment on the special assessments. Special assessment bonds may be issued pursuant to statutory or charter provisions applicable to the issuance by the local governmental unit of special assessment bonds for the improvement or, if there are no applicable statutory or charter provisions, pursuant to statutory or charter provisions applicable to the issuance by the local governmental unit of special assessment bonds for street improvements.

(6) If a district project in a district designated by the governing body of a local governmental unit after July 14, 1992 is financed by special assessments, the governing body of the local governmental unit shall review the special assessments every 5 years, unless special assessment bonds are outstanding.

(7) Before a local governmental unit levies a special assessment under this chapter that benefits property within a business improvement district, the business improvement district board shall develop a marketing and development plan that details all of the following:

(a) The scope, nature, and duration of the business improvement district project or projects.

(b) The different classes of property owners who are going to be assessed and the projected amount of the special assessment on the different classes.

(8) A local governmental unit that levies a special assessment under this chapter that benefits property within a business improvement district is considered to have approved the marketing and development plan described in subsection (7).

125.986 Special assessments; off-street parking lots or structures.

Sec. 6. If off-street parking lots or structures are essential to the principal shopping district project, if 1 or more off-street parking lots or structures are already owned by the local governmental unit and were acquired through the issuance of revenue bonds, and if the remaining parking lots or structures are to be financed in whole or in part by special assessments and special assessment bonds, then the local governmental unit, to place all parking lots or structures on the same basis, may include as a part of the cost of parking lots or structures for the project the amount necessary to retire all or any part of the outstanding revenue bonds, inclusive of any premium not exceeding 5% necessary to be paid upon the redemption or purchase of those outstanding bonds. From the proceeds of the special assessments or from the sale of bonds issued in anticipation of the payment of the special assessments, the local governmental unit shall retire by redemption or purchase the outstanding revenue bonds. This section does not authorize the refunding of noncallable bonds without the consent of the holders of the bonds.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 210]

(HB 5156)

AN ACT to amend 1909 PA 279, entitled “An act to provide for the incorporation of cities and for revising and amending their charters; to provide for certain powers and duties; to provide for the levy and collection of taxes by cities, borrowing of money, and issuance of bonds or other evidences of indebtedness; to validate actions taken, bonds issued, and obligations heretofore incurred; to prescribe penalties and provide remedies; and to repeal acts and parts of acts on specific dates,” (MCL 117.1 to 117.38) by adding section 36a.

The People of the State of Michigan enact:

117.36a Financial recovery bonds; amounts; terms and conditions; net indebtedness of city; limitation; bonds not subject to MCL 141.2101 to 141.2821.

Sec. 36a. (1) Except as otherwise provided under this section, if a financial emergency exists under the local government fiscal responsibility act, 1990 PA 72, MCL 141.1201 to 141.1291, a city may issue financial recovery bonds in amounts greater than the limitations established by the city charter or this act.

(2) Any financial recovery bonds issued under this section are subject to the terms and conditions approved by the local emergency financial assistance loan board created under the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(3) Any financial recovery bonds issued under this section are not subject to section 5(g).

(4) Notwithstanding subsection (1), the net indebtedness of a city, reduced by any amounts excluded under section 4a(4), shall not exceed 20% of the assessed value of the city.

(5) Financial recovery bonds issued under this section are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 211]

(SB 770)

AN ACT to amend 1967 PA 281, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts,” (MCL 206.1 to 206.532) by adding section 355a.

The People of the State of Michigan enact:

206.355a Filing form 1099-MISC with department; noncompliance; penalty; filing with city.

Sec. 355a. (1) A person required under the internal revenue code to file a form 1099-MISC for a tax year shall file a copy of that form 1099-MISC with the department on or before January 31 each year or on or before the day required for filing form 1099-MISC under the internal revenue code, whichever is later.

(2) A person who fails to comply with subsection (1) is liable to the department for a penalty of \$50.00 for each form 1099-MISC the taxpayer fails to file.

(3) A person required to file a form 1099-MISC under this section shall also file a copy of the form 1099-MISC with the city reported as the payee’s address on the form 1099-MISC if that city imposes a city income tax pursuant to the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 212]

(HB 4753)

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of

proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date,” by amending section 57b (MCL 257.57b).

The People of the State of Michigan enact:

257.57b “School crossing guard” defined.

Sec. 57b. “School crossing guard” means a person 17 years of age or older authorized to supervise children using a school crossing as provided in section 613c.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 213]

(SB 224)

AN ACT to designate the fourth Friday in April of each year as children’s memorial day in the state of Michigan.

The People of the State of Michigan enact:

435.291 “Children’s Memorial Day.”

Sec. 1. (1) The legislature recognizes the great number of tragic deaths of children of all ages from all causes that occur each year. Each day in America many children and youths under age 20 commit suicide, are victims of a homicide, or die as a result of accidents. Many more children die from illness. In commemoration of this terrible toll, the legislature declares that the fourth Friday in April of each year shall be known as “Children’s Memorial Day”.

(2) The legislature encourages individuals, educational institutions, and social, community, religious, labor, and business organizations to pause on children’s memorial day and reflect upon the precious resource that our children constitute and the great loss we suffer when we lose our children.

This act is ordered to take immediate effect.

Approved November 25, 2003.

Filed with Secretary of State November 26, 2003.

[No. 214]

(HB 5188)

AN ACT to amend 1939 PA 3, entitled “An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to

provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,” by amending section 10a (MCL 460.10a), as added by 2000 PA 141.

The People of the State of Michigan enact:

460.10a Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent; code of conduct; extension of temporary waiver; orders issued before June 5, 2000; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; true-up adjustment; determination of net stranded costs; securitization charges; rates of returning customers.

Sec. 10a. (1) No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility’s net stranded costs and implementation costs as determined by the commission.

(2) The commission shall issue orders establishing a licensing procedure for all alternative electric suppliers. To ensure adequate service to customers in this state, the commission shall require that an alternative electric supplier maintain an office within this state, shall assure that an alternative electric supplier has the necessary financial, managerial, and technical capabilities, shall require that an alternative electric supplier maintain records which the commission considers necessary, and shall ensure an alternative electric supplier’s accessibility to the commission, to consumers, and to electric utilities in this state. The commission also shall require alternative electric suppliers to agree that they will collect and remit to local units of government all applicable users, sales, and use taxes. An alternative electric supplier is not required to obtain any certificate, license, or authorization from the commission other than as required by this act.

(3) The commission shall issue orders to ensure that customers in this state are not switched to another supplier or billed for any services without the customer’s consent.

(4) Within 180 days after June 5, 2000, the commission shall establish a code of conduct that shall apply to all electric utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility’s regulated and unregulated services, whether those services are provided by the utility or the utility’s affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10cc.

(5) Before December 31, 2003, the commission shall extend the temporary waiver for appliance service plans granted in case no. U-12134 issued February 20, 2003, to July 1,

2004, subject to the conditions imposed by that order. The enactment of this subsection shall not be deemed to prejudice, delay, or affect any pending legal case or legal proceeding.

(6) The orders issued by the commission before June 5, 2000 that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and that confirm any voluntary commitments of electric utilities, are in compliance with this act and enforceable by the commission. An electric utility that has not had voluntary commitments to provide customer choice previously approved by orders of the commission shall file a restructuring plan to allow customers to choose an alternative electric supplier no later than the date ordered by the commission. The plan shall propose a methodology to determine the electric utility's net stranded costs and implementation costs.

(7) This act does not prohibit or limit the right of a person to obtain self-service power and does not impose a transition, implementation, exit fee, or any other similar charge on self-service power. A person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business. As used in this subsection, "self-service power" means any of the following:

(a) Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility's transmission and distribution system.

(b) Electricity generated primarily by the use of by-product fuels, including waste water solids, which electricity is consumed as part of a contiguous facility, with the use of an electric utility's transmission and distribution system, but only if the point or points of receipt of the power within the facility are not greater than 3 miles distant from the point of generation.

(c) A site or facility with load existing on June 5, 2000 that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement of this subdivision regardless of whether self-service power was being generated on June 5, 2000.

(d) A commercial or industrial facility or single residence that meets the requirements of subdivision (a) or (b) meets this definition whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

(8) This act does not prohibit or limit the right of a person to engage in affiliate wheeling and does not impose a transition, implementation, exit fee, or any other similar charge on a person engaged in affiliate wheeling. As used in this section:

(a) "Affiliate" means a person or entity that directly, or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in this subdivision, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.

(b) "Affiliate wheeling" means a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or general aggregated locations, within this state that was either 1 of the following:

(i) For at least 90 days during the period from January 1, 1996 to October 1, 1999, supplied by self-service power, but only to the extent of the capacity reserved or load served by self-service power during the period.

(ii) Capable of being supplied by a person's cogeneration capacity within this state that has had since January 1, 1996 a rated capacity of 15 megawatts or less, was placed in

service before December 31, 1975, and has been in continuous service since that date. A person engaging in affiliate wheeling is not an electric supplier, an electric utility, or conducting an electric utility business when a person engages in affiliate wheeling.

(9) The rights of parties to existing contracts and agreements in effect as of January 1, 2000 between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, shall not be abrogated, increased, or diminished by this act, nor shall the receipt of any proceeds of the securitization bonds by an electric utility be a basis for any regulatory disallowance. Further, any securitization or financing order issued by the commission that relates to a qualifying facility's power purchase contract shall fully consider that qualifying facility's legal and financial interests.

(10) The commission shall, after a contested case proceeding, issue annually an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility will not be affected by the true-up process under this subsection. The commission shall review the electric utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

(11) The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

- (a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
- (b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.
- (c) Any other method the commission considers appropriate.

(12) The true-up adjustment adopted under subsection (10) shall not result in a modification to the securitization charge. The commission shall not adjust or change in any manner securitization charges authorized by the commission in a financing order issued under section 10i as a result of its review and any action taken under subsection (10).

(13) After the time period described in section 10d(2), the rates for retail customers that remain with or leave and later return to the incumbent electric utility shall be determined in the same manner as the rates were determined before the effective date of this section.

This act is ordered to take immediate effect.

Approved December 1, 2003.

Filed with Secretary of State December 2, 2003.

[No. 215]

(SB 496)

AN ACT to provide for the organization, operation, regulation, and supervision of credit unions; to prescribe the powers and duties of credit unions; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties, civil sanctions, and remedies; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE 1

GENERAL PROVISIONS

490.101 Short title.

Sec. 101. This act shall be known and may be cited as the “credit union act”.

490.102 Definitions; A to I.

Sec. 102. As used in this act:

(a) “Affiliate” means a person, other than an individual or governmental entity, to which any of the following apply:

(i) A credit union directly or indirectly owns or controls a majority of the person’s voting shares or other voting ownership interests.

(ii) A credit union directly or indirectly owns or controls more than 50% of the number of shares or other ownership interests voted at the most recent election for the election of its directors, trustees, or other individuals who exercise similar functions.

(iii) A credit union has the power to directly or indirectly elect a majority of the person’s directors, trustees, or other individuals who exercise similar functions.

(iv) A majority of a credit union board constitutes a majority of the directors, trustees, or other persons exercising similar functions of the person.

(b) “Alien credit union” means a credit union organized under the laws of a country other than the United States.

(c) “Bank” means a bank that is organized under the laws of this state, any other state, the District of Columbia, or a territory or protectorate of the United States, or a national banking association chartered by the federal government under the national bank act, chapter 106, 13 Stat. 99, and whose deposits are insured by an agency of the federal government.

(d) “Borrower” means a member who obtains a loan from a domestic credit union.

(e) “Branch” means a place of business, other than the principal place of business, that is owned or leased by a credit union and where the credit union transacts business authorized by the credit union board.

(f) “Commissioner” means the commissioner of the office of financial and insurance services in the department of consumer and industry services.

(g) “Corporate credit union” means a domestic credit union described in section 302.

(h) “Credit union” means a domestic or foreign credit union.

(i) “Credit union board” means a board of directors, board of trustees, or other governing body of a credit union.

(j) “Credit union service organization” means an organization described in section 407.

(k) “Debt management” means that term as defined in section 2 of the debt management act, 1975 PA 148, MCL 451.412.

(l) “Domestic credit union” means a cooperative, nonprofit entity organized under this 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.

(m) “Eligibility record date” means a record date that is 1 year or more before the adoption of a plan of conversion by a credit union board and is set forth in a plan of conversion for determining eligible members of a converting credit union.

(n) “Emergency” means a condition, event, or occurrence that meets both of the following:

(i) It has or may interfere with the conduct of normal business operations, or poses an imminent or existing threat to the safety and security of a person or property, at the principal place of business or 1 or more branches of a credit union.

(ii) It is the result of 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.

(o) “Federal credit union” means a credit union organized under the laws of the United States.

(p) “Field of membership” means that term as established under section 352.

(q) “Financial institution” means a credit union, bank, savings bank, or savings and loan association.

(r) “Foreign credit union” means a credit union organized under the laws of another state or territory of the United States or a federal credit union.

(s) “Insolvent” means a credit union that meets either of the following:

(i) It is not able to pay its debts and other obligations, including those related to member shares, as they become due.

(ii) Its liabilities exceed its assets.

490.103 Definitions; M to S.

Sec. 103. As used in this act:

(a) “Membership share” means a share of a domestic credit union equal in amount to the par value of the credit union’s shares that is credited to an account of a member by the credit union, is required as a condition of membership in the credit union, and is subject to any withdrawal restriction or other standards established by the domestic credit union for membership shares.

(b) “Mutual savings and loan association” means a savings and loan association that is not authorized by its articles of incorporation to issue capital stock.

(c) “Mutual savings bank” means a savings bank that is not authorized by its articles of incorporation to issue capital stock.

(d) “Net worth” means the sum of a credit union’s undivided earnings and reserves. The term does not include allowances for loan and lease losses accounts.

(e) “Officer” means the chairperson of the board, the vice-chairperson of the board, the secretary, the treasurer, the general manager, an individual whose title is “president” or “vice president”, an assistant treasurer, or an assistant secretary of a credit union, or any other person specifically designated as an officer of a credit union by the credit union board.

(f) “Official” means a member of a credit union board or an officer, member of a credit committee or supervisory committee, or member of any other committee performing functions similar to a credit committee or supervisory committee, of a credit union.

(g) “Person” means an individual, corporation, partnership, limited liability company, association, governmental entity, or any other legal entity.

(h) “Principal place of business” means the place where a domestic credit union keeps its principal records.

(i) “Savings and loan association” means a savings association organized under the laws of this state, a savings and loan association, building and loan association, or homestead association that is organized under the laws of any other state, the District of Columbia, or a territory or protectorate of the United States, or a federal savings association organized under section 5 of the home owners’ loan act, chapter 64, 48 Stat. 132, 12 U.S.C. 1464, and whose deposits are insured by an agency of the federal government.

(j) “Savings bank” means a savings bank organized under the laws of this state, any other state, the District of Columbia, a territory or protectorate of the United States, or of the United States, and whose deposits are insured by an agency of the federal government.

(k) “Senior management employee” means a credit union’s general manager or an assistant general manager or the chief financial officer of the credit union.

(l) “Service center” means a place of business of a credit union, other than the principal place of business or a branch, where the credit union may transact business authorized by the credit union board.

(m) “Stock savings and loan association” means a savings and loan association that is authorized by its articles of incorporation to issue capital stock.

(n) “Stock savings bank” means a savings bank that is authorized by its articles of incorporation to issue capital stock.

490.104 “Credit union”; use in name or title; restrictions; “corporate” or “corporate central”; use in name.

Sec. 104. (1) A person shall not use the words “credit union” in its name or title, unless it is 1 of the following:

- (a) A domestic credit union or a foreign credit union.
- (b) A credit union trade association.
- (c) A credit union service organization.

(d) An organization that is wholly owned by 1 or more domestic credit unions, foreign credit unions, credit union trade associations, or credit union service organizations.

(e) A separate segregated fund established under section 55 of the Michigan campaign finance act, 1976 PA 388, MCL 169.255, or a political action committee under federal law.

(2) A credit union may not use the word “corporate” or the words “corporate central” immediately before the words “credit union” in its name unless it is a corporate credit union organized under this act, the laws of another state or territory of the United States, or the laws of the United States.

490.105 Domestic credit union; exemption from tax; exception; stock transfer tax.

Sec. 105. A domestic credit union is exempt from taxation by this state or a political subdivision of this state except property taxes on real property. The shares of a domestic credit union are not subject to a stock transfer tax when issued by the credit union or when transferred from 1 member to another.

ARTICLE 2

SUPERVISION BY COMMISSIONER

PART 1

ADMINISTRATION, SUPERVISION, AND ENFORCEMENT

490.201 Supervision by administrator; administration of laws; annual operating fee; limitation; report filed by domestic credit union; delinquent fee; waiver; amendments to bylaws or certificate of organization; examination of accounts, books, and records; “records” defined.

Sec. 201. (1) The commissioner shall administer the laws of this state relating to credit unions transacting business in this state and shall supervise domestic credit unions, and

foreign credit unions other than federal credit unions transacting business in this state. Each domestic credit union shall report its financial condition as required by the commissioner.

(2) The commissioner 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 commissioner shall establish a fee amount that is sufficient to defray the estimated expenses of the credit union division of the office of financial and insurance services in performing all credit union examinations and the supervision of domestic credit unions.

(b) The commissioner 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 commissioner 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 commissioner 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 commissioner of not less than \$1.75 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 commissioner shall not require a domestic credit union to pay an operating fee more often than annually.

(3) A corporate credit union 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 commissioner. A domestic credit union that fails to file a report with the commissioner when it is due shall pay a fee of \$100.00 for each day the report is delinquent. The commissioner may waive the fee for cause. If a delinquency continues for 15 days, the commissioner 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 commissioner 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 shall file the amendment with the commissioner. The commissioner shall not charge a fee for reviewing and approving or disapproving of an amendment under 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 commissioner or the commissioner's appointed agent. A domestic credit union shall do all of the following:

(a) Provide the commissioner 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 commissioner 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 commissioner 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.

490.202 Fees, fines, or other money received or collected by commissioner; disposition; use.

Sec. 202. Any fees, fines, or other money received or collected by the commissioner or the office of financial and insurance services under this act is not refundable and shall be deposited into the state treasury to the credit of the office of financial and insurance services and used only for the operation of the office of financial and insurance services.

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

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 rule 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.

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.

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.

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.

490.207 Examination by commissioner; conduct; report.

Sec. 207. (1) The commissioner 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, not less frequently than once every 18 months. The commissioner 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 commissioner or the commissioner's authorized agent may examine under oath a director, officer, agent, or employee of a domestic credit union concerning the affairs and business of the domestic credit union. The commissioner or the commissioner's authorized agent may examine an affiliate of a domestic credit union if necessary to fully disclose the relation between the domestic credit union and the affiliate and the effect of the relation upon the domestic credit union.

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

(4) In an examination under this section, the commissioner may use an examination made under the federal credit union act, chapter 750, 48 Stat. 1216, 12 U.S.C. 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 commissioner may require a credit union to furnish a copy of any report required by a federal or state credit union regulatory agency.

(5) The commissioner 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 of a domestic credit union and examination-related documents prepared or obtained under this section remain the property of the commissioner. A person who disseminates all or part of a domestic credit union's report of examination for purposes other than the legitimate business purposes of the domestic credit union or as otherwise authorized by this act violates this act and is subject to the administrative remedies granted the commissioner under this part.

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.

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.

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

Sec. 210. (1) If in the opinion of the commissioner 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 commissioner 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 commissioner should issue an order to cease and desist. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the commissioner 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 upon the record made at the hearing under subsection (1) the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has occurred, the commissioner may issue and serve upon 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 upon 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 commissioner or a reviewing court.

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

(5) If the commissioner determines that a federal credit union is acting in violation of the laws of this state, the commissioner shall notify the national credit union administration and the attorney general.

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.

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 or officer of a 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 as a director or officer 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 director or officer a written notice of intention to remove the person from office.

(2) If in the opinion of the commissioner a director, officer, or other person is participating or has participated in the conduct of the affairs of a domestic credit union, and that person 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 the 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.

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).

490.214 Person charged with felony 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. If a person participating 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 felony involving dishonesty or breach of trust, the commissioner may by written notice served on the person suspend the person from office or prohibit the person from further participation in any manner in the conduct of the affairs of the domestic credit union. The commissioner 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 commissioner. If a judgment of conviction with respect to the offense is entered against the person, and when the judgment is not subject to further appellate review, the commissioner may issue an order

removing the person from office or prohibiting the person from further participation in the conduct of the affairs of the domestic credit union without the consent of the commissioner. The person is removed from office as a director or officer of the domestic credit union when a copy of the order is served upon the domestic credit union. A finding of not guilty or other disposition of the charge does not preclude the commissioner from instituting proceedings to suspend or remove the person from office or to prohibit further participation in credit union affairs under section 212(1), (2), or (3).

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.

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.

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 a director, officer, 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.

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.

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.

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.

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

Sec. 221. (1) The commissioner 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 commissioner that the action is required because an emergency exists. The facilities closed shall remain closed until the commissioner by order finds that the emergency is ended. The commissioner shall promptly notify the governor of the issuance of an order under this section.

(2) The commissioner 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 commissioner 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 commissioner, 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.

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.

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.

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.

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 in receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, 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.

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.

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.

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.

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.

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.

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.

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).

ARTICLE 3

DOMESTIC CREDIT UNION ORGANIZATION AND STRUCTURE

PART 1

FORMATION AND OPERATION

490.301 Domestic credit union; membership; organization; approval by commissioner; notice; disapproval; request to reconsider; hearing; appeal; retention by commissioner of original certificate of organization and bylaws; delivery; form.

Sec. 301. (1) Seven individuals, a majority of whom are residents of this state and all of whom are within the proposed field of membership of the domestic credit union, may file an application to organize a domestic credit union under this act. This subsection does not apply to the organization of a corporate credit union.

(2) A domestic credit union is organized in the following manner:

(a) The applicants shall file an application in the form prescribed by the commissioner. The application shall contain all of the following information:

(i) The name and all proposed trade names of the domestic credit union.

(ii) The location of the principal place of business and any initial branches of the domestic credit union.

(iii) The names and addresses of the applicants and the number of shares subscribed by each.

(iv) The par value of the shares of the domestic credit union. The par value of a share shall not exceed \$100.00.

(v) The proposed field of membership.

(vi) Any other information required by the commissioner.

(b) The applicants shall deliver the application to the commissioner, with an application fee in an amount established by the commissioner.

(c) Within 60 days after receipt of an application or the last amendment or supplement to the application, the commissioner shall do all of the following:

(i) Examine the information contained in the application and conduct any investigation the commissioner considers necessary pertaining to the organization of the new domestic credit union.

(ii) Determine whether the organization of the proposed domestic credit union will benefit its members.

(iii) Determine whether a federal agency authorized to insure share and deposit accounts has issued a firm commitment to provide that insurance for the domestic credit union.

(iv) Determine whether organization of the domestic credit union is consistent with the purposes of this act.

(v) Approve or disapprove the proposed field of membership only on the basis of safety and soundness.

(d) The commissioner approves or disapproves of the organization of the domestic credit union.

(e) If the commissioner approves, he or she issues a certificate of approval.

(3) The decision to approve or disapprove of the organization of a domestic credit union under subsection (2) is discretionary with the commissioner. The commissioner shall notify the applicants of his or her decision. If the commissioner approves, he or she shall issue a certificate of organization and approved bylaws of the domestic credit union. If all of the organizers sign the certificate of organization and adopt the bylaws and return the certificate of organization and bylaws to the commissioner, the commissioner shall issue the certificate of approval authorizing the commencement of business. If the commissioner disapproves, he or she shall state the reasons for the decision and the applicant may request a hearing to reconsider the decision before the commissioner within 30 days after the mailing of a copy of the decision to the applicants. Within 10 days after receipt of a request for a hearing to reconsider, the commissioner shall set a date for the hearing that is within 60 days after the date the request was received. If the commissioner does not approve the organization of the domestic credit union after the hearing to reconsider, the applicants may file an appeal of the commissioner's decision in the circuit court for the county stated in the application as the location of the principal office of the domestic credit union or in the circuit court for Ingham county within 30 days after the date of mailing by certified mail of a copy of the decision to the applicants. If the applicants appeal to the circuit court, the commissioner shall retain the exhibits introduced at the hearing and shall forward them to the circuit court. The applicants shall pay the cost of preparation of the stenographer's record of the hearing to reconsider.

(4) If a certificate of approval authorizing a domestic credit union to commence business is issued under subsection (2), the domestic credit union is organized for purposes of this act.

(5) The commissioner shall retain the original certificate of organization and the original bylaws. The commissioner shall deliver the certificate of approval and a copy of the approved bylaws to the domestic credit union.

(6) The commissioner shall prescribe the form of the certificate of organization and the bylaws and shall furnish them upon request to a domestic credit union or a person who is considering organization of a domestic credit union.

490.302 Organization of credit union by 2 or more credit unions.

Sec. 302. Two or more credit unions may file an application to organize a corporate credit union in this state whose field of membership is composed primarily of credit unions.

490.303 Amendment to certificate of organization or bylaws.

Sec. 303. If approved by a majority of the members present at a duly constituted annual or special meeting of the members, the membership may amend the certificate of organization or bylaws of a domestic credit union or delegate authority to the credit union board, or rescind the authority of the credit union board, to amend the certificate of organization or bylaws. Any proposed action to amend the certificate of organization or the bylaws or to delegate authority to amend the certificate of organization or bylaws to the credit union board shall be stated in a notice of the meeting. An amendment to the certificate of organization or bylaws is not effective unless it is submitted to the commissioner for review and approved by the commissioner.

490.304 Principal place of business; branches; service centers; trade names.

Sec. 304. (1) A domestic credit union may change the location of its principal place of business within this state if it provides the commissioner with written notice at least 30 days before the change of location.

(2) A domestic credit union shall file the address of the principal place of business and the name of the treasurer and general manager of the credit union with the commissioner on a form prescribed by the commissioner. If the address of the principal place of business or the name of the treasurer or general manager changes, the credit union shall provide the commission with written notice of the change within 3 business days after the change.

(3) A domestic credit union may establish and maintain branches. The credit union shall provide written notice to the commissioner of the location of a branch before establishing the branch.

(4) A domestic credit union and 1 or more domestic or foreign credit unions or other financial organizations may establish and maintain service centers. One or more of the financial organizations that establish a service center may operate the service center, or the financial organizations organizing the service center may contract with another person to operate the service center. A domestic credit union may refer to a service center as a branch.

(5) Subject to all of the following, a domestic credit union may adopt or change 1 or more trade names:

(a) The domestic credit union shall give written notice of the proposed trade name to the commissioner at least 30 days before using the trade name.

(b) The commissioner may deny a domestic credit union the right to use a given trade name or terminate a credit union's right to use a trade name for any reason.

(c) A domestic credit union using a trade name shall clearly and conspicuously disclose the legal name of the credit union and the trade name in all signs, advertising, mailings, and similar materials and shall clearly and conspicuously disclose the trade name and the legal name of the credit union in all legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.

(d) A trade name may not contain the phrase "credit union".

490.305 Books and records; availability.

Sec. 305. (1) A domestic credit union shall maintain its books and records at its principal place of business filed with the commissioner under section 304 and make the

books and records available for examination by the commissioner or his or her authorized agent, except as follows:

(a) A credit union may maintain specified books and records at a location in this state other than its principal place of business if it gives notice to the commissioner of the location of the specified books and records and can produce those books and records at its principal place of business within 3 business days after a request from the commissioner to examine them.

(b) Except as required by other applicable law, a credit union may store records that are more than 3 years old at an off-site facility or on alternative storage media if the records are available for examination by the commissioner or his or her appointed agent.

(c) A domestic credit union may maintain records specific to a branch located outside of this state at that branch if the credit union can make the originals of those records available to the commissioner within this state within 3 business days after a request from the commissioner to examine them. If a law applicable in the state where the branch is located prohibits the removal of the original records from that state, the credit union shall notify the commissioner of that law and provide copies of the records to the commissioner.

(2) If a domestic credit union does not make its books and records available to the commissioner or his or her authorized agent in the manner described in subsection (1), the commissioner may obtain an order from the circuit court of the county in which the credit union is located requiring the credit union to produce the books and records for examination.

490.306 Conducting business by mail or electronic communication.

Sec. 306. With the prior approval of the commissioner, a domestic credit union may conduct its business solely by mail or through electronic communication without having a physical location where members may transact business with the credit union. A domestic credit union conducting business under this section shall maintain a principal place of business in this state.

490.307 Suspicious activity report.

Sec. 307. (1) If a domestic credit union files a suspicious activity report with an agency of the federal government, the credit union shall also within 24 hours file a copy of the suspicious activity report with the department of state police.

(2) A domestic credit union may file the suspicious activity report with the department of state police under subsection (1) in any manner allowed by federal law or regulation or in any other manner acceptable to the department of state police.

(3) Except for a violation of section 5318(g) of title 31 of the United States Code, 31 U.S.C. 5318, a domestic credit union or a director, officer, employee, or agent of the domestic credit union is not liable in any civil or governmental action for filing a copy of a suspicious activity report under this section or failing to notify an account holder or any other person of the filing.

PART 2

DISSOLUTION

490.331 Voluntary or involuntary dissolution.

Sec. 331. (1) A domestic credit union may voluntarily dissolve under subsection (2) or be involuntarily dissolved under subsection (3).

(2) A domestic credit union may voluntarily dissolve if all of the following are met:

(a) At least 30 days before the vote described in subdivision (b), the credit union board mails a notice to each member of the domestic credit union that it is considering dissolution. The credit union board shall not include the notice with any other mailing sent to the member. The notice shall include all of the following:

(i) A brief explanation of why the board is considering dissolution.

(ii) A brief summary of the major positive and negative effects of the proposed dissolution.

(iii) A request for written comments on the proposed dissolution.

(b) By an affirmative vote of 2/3 of all of the directors entitled to vote, the credit union board approves of a plan of dissolution and submits the plan and any member comments to the commissioner for preliminary review.

(c) Before the vote of the members under subdivision (g), the commissioner reviews the dissolution plan and any member comments on the dissolution plan and grants preliminary approval. The commissioner shall grant preliminary approval of the dissolution plan only if the commissioner is satisfied of all of the following:

(i) The dissolution plan adequately discloses to the members information concerning the advantages and disadvantages of the proposed dissolution.

(ii) The dissolution does not circumvent a pending supervisory action that is initiated by the commissioner or another regulatory agency because of a concern over the safety and soundness of the domestic credit union.

(iii) The dissolution plan does not provide any official of the domestic credit union with any remuneration or other economic benefit in connection with the dissolution of the domestic credit union.

(d) If the commissioner grants preliminary approval under subdivision (c), the credit union board shall call a special meeting of the members to vote on the dissolution plan and mail to each member notice of the meeting and proposed dissolution 90 days and 60 days before the date of the special meeting. Each notice shall include all of the following:

(i) A summary of the positive and negative effects of the proposed dissolution.

(ii) A statement that the directors will not receive any remuneration or other economic benefit in connection with the dissolution of the domestic credit union.

(iii) A statement that any interested person may obtain more detailed information about the dissolution from the domestic credit union at its principal place of business or by any method approved in advance by the commissioner.

(iv) A statement that the credit union board may substantively amend the proposed plan of dissolution before the special meeting based on comments from regulatory authorities or any other reason and that the credit union board may terminate the proposed plan of dissolution.

(v) Instructions for obtaining a copy of the dissolution plan.

(vi) The date of the special meeting and a statement that the vote on the dissolution will close on that date.

(vii) Any other information required by the commissioner.

(e) Thirty days before the special meeting of the members, the credit union board mails a notice of the meeting and proposed dissolution. The notice shall include all of the information described in subdivision (d) for the 90-day and 60-day notices and shall include the date, time, and place of the special member meeting, a ballot and postage-paid return envelope, and a summary of the methods permitted for casting votes.

(f) If the plan of dissolution is substantively amended by the credit union board, at least 30 days before the vote of the members on the plan the credit union board shall mail a notice to each member. The notice shall contain the information concerning the amended plan of dissolution that is described in subdivision (d) for a notice under that subdivision.

(g) At a special meeting of members, the members by a 2/3 vote of members voting to approve of the dissolution and the plan of dissolution. A member may vote in person or by mail. With the prior approval of the commissioner, a domestic credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(h) The domestic credit union files with the commissioner all of the following:

(i) Certified copies of records of all proceedings held by the credit union board and members of the domestic credit union.

(ii) Copies of member comments submitted to the domestic credit union under subdivision (a)(iii).

(iii) If that consent or approval is required, a certified copy of the consent or approval of a federal regulatory authority.

(i) If subdivisions (a) through (h) are met and the commissioner determines that the notices to members were accurate, timely, and not misleading and that conduct of the vote on the dissolution plan was fair and lawful, the commissioner shall approve the dissolution and the credit union board may implement the dissolution plan.

(3) If the commissioner determines that a domestic credit union is insolvent or revokes the domestic credit union's certificate of organization under section 201(4), the commissioner may involuntarily dissolve the domestic credit union and either appoint a receiver under part 2 of article 2 or appoint a conservator under part 3 of article 2.

PART 3

OFFICERS, OFFICIALS, AND DIRECTORS

490.341 Organizational meeting; annual meeting; membership; director; committee members; qualifications; removal; vacancy.

Sec. 341. (1) The organizers shall hold an organizational meeting of a domestic credit union organized under this act. The organizational meeting of the domestic credit union is the first annual meeting of the members required under section 351.

(2) Each member of the credit union board of a domestic credit union shall be a member of the domestic credit union. The bylaws shall establish the number of directors, but a credit union board must consist of 5 or more individuals. A director shall hold office for the term established in the bylaws and until a successor takes office.

(3) If the bylaws of a domestic credit union provide for a credit committee or a supervisory committee, that committee shall consist of 3 or more individuals and may have alternate committee members, as established in the bylaws, each of whom is a member of the domestic credit union. The bylaws shall provide whether the credit union board may appoint or the members may elect committee members and their terms of office and the duties of the committee. Except as provided in section 345, a current director, officer, loan officer, credit committee member, or other employee of the domestic credit union shall not serve on the supervisory committee.

(4) If the bylaws of a domestic credit union do not provide for a credit committee or a supervisory committee, the credit union board shall perform the duties of the credit committee or the supervisory committee or delegate those duties as it considers advisable.

(5) A corporate credit union shall have at least 1 member of the credit union board, the supervisory committee, if any, and the credit committee, if any, who is a resident of this state.

(6) A domestic credit union shall provide the commissioner with a record of the names and addresses of the members of the credit union board and the members of the credit and supervisory committees, if any, within 30 days after their election.

(7) If the commissioner considers it appropriate, the commissioner may call a meeting of the credit union board, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days prior to the meeting to the directors. The commissioner shall deliver the notice to their last known addresses as shown by the books of the domestic credit union.

(8) Each individual elected or appointed to serve as a director, credit committee member, or supervisory committee member of a domestic credit union shall meet all of the following criteria:

(a) He or she is a member of the domestic credit union, in good standing according to reasonable criteria established by the credit union board.

(b) He or she is acceptable as a bonding risk by a bonding company licensed to do business in this state.

(c) He or she has not been removed as a director, officer, or employee of a financial institution by a federal regulator, a state regulator other than the commissioner, or a court of competent jurisdiction.

(d) The commissioner has not removed him or her as a director, officer, or employee of a credit union, financial institution, or other legal entity pursuant to the commissioner's enforcement powers under any law of this state.

(e) He or she has not been convicted within the preceding 20 years of a crime involving dishonesty or breach of trust.

(f) He or she is not habitually negligent in paying his or her financial obligations as determined by criteria reasonably established by the credit union board.

(g) He or she has not been convicted by a court of competent jurisdiction of a violation, or found in violation by a court of competent jurisdiction or the commissioner, of any law of this state enforced or administered by the commissioner.

(9) If an individual no longer meets any of the requirements of subsection (8) while serving as a director, credit committee member, or supervisory committee member of a domestic credit union, he or she is immediately removed from that office without further action of the members or credit union board and the domestic credit union shall appoint or elect a replacement to fill the vacancy in the manner described in the bylaws.

490.342 Credit union board; election of officers; general management; duties; delegation to general manager of domestic credit union; compensation; removal of director or committee member with delinquent loan; quorum; action taken without meeting; oath.

Sec. 342. (1) At its first meeting, the credit union board shall elect from the credit union board members a chairperson, vice-chairperson, treasurer, and secretary. An individual may serve as both treasurer and secretary. A credit union may refer to these officers by

different titles. The credit union shall establish the duties of all of the officers of the credit union in its bylaws.

(2) A credit union board has general management of the affairs of the domestic credit union. The credit union board has the authority and responsibility for the general direction of the business affairs, funds, and records of the domestic credit union and is responsible for maintaining its safety and soundness. The duties of the credit union board include, but are not limited to, the duties described in subsection (3) or (4).

(3) The credit union board shall perform all of the following duties, which the credit union board may not delegate to another person or committee:

(a) Except as provided in section 345(3), filling a vacancy on the board until a successor is elected by the members.

(b) Establishing the maximum individual shareholdings of members.

(c) Establishing the maximum amount of secured and unsecured loans made by the domestic credit union, subject to any limitations under the bylaws of the domestic credit union adopted and approved by the commissioner.

(d) Employing a general manager and fixing his or her compensation.

(e) Approving an annual operating budget.

(f) Acquiring, selling, or encumbering real property.

(g) Appointing special committees as the board deems necessary.

(h) Borrowing money under section 401(2)(j).

(i) Fixing the amount of the surety bonds for all officers and employees handling money.

(j) Determining the par value of shares under section 301.

(k) Recommending changes in the bylaws to the members.

(l) Specifying forms and procedures for applications for membership and set criteria for use in determining whether to accept an applicant into membership.

(m) Adopting investment policies.

(n) Adopting other policies necessary for the operation of the domestic credit union.

(o) Establishing the titles of the officers holding the positions described in this section. The credit union board shall not establish any misleading titles for officers.

(p) Meeting at least once every 62 days and at least 9 times each calendar year, in person or by means of electronic communication devices that enable all participants in a meeting to communicate simultaneously with each other.

(q) Performing any other duties required by the members.

(4) A credit union board shall perform, or delegate to the general manager of the domestic credit union according to guidelines established by the credit union board that may include the authority to further delegate 1 or more duties, all of the following duties:

(a) Approving, disapproving, or otherwise acting on applications for membership.

(b) Determining the interest rates on loans and on deposits.

(c) Hiring employees other than the general manager and fixing their compensation.

(d) Making and selling investments according to investment policies adopted by the board.

(e) Designating 1 or more depositories for funds.

(f) Establishing procedures to implement policies of the credit union board.

- (g) Establishing internal controls as necessary.
- (h) Determining the amount of a dividend after providing for any required reserves and declaring the dividend.
- (5) A credit union board may do any of the following:
- (a) By resolution, designate a general manager and define his or her duties.
- (b) Appoint an executive committee that consists of not fewer than 3 directors. An executive committee may act on any matter specifically authorized by the board.
- (c) Remove a director by a 2/3 vote of the credit union board, for cause or for any reason set forth in the bylaws. In addition to removal under section 341(9), the domestic credit union's bylaws may also provide for immediate removal of a director from that office without further action of the members or credit union board if 1 or more events specified in the bylaws occur.
- (d) If the domestic credit union does not have a supervisory committee, remove a credit committee member by a 2/3 vote of the credit union board.
- (e) If there is no supervisory committee, suspend a member of the credit union board by a 2/3 vote of the credit union board. If a member of the credit union board is suspended under this subdivision or section 345(2), the remaining directors shall report the suspension and the cause for the suspension to the commissioner within 3 days and shall call a special members' meeting that shall take place not less than 7 or more than 45 days after the suspension. At the special members' meeting, the remaining directors shall report the cause for the suspension, the suspended director has the right to be heard, and the members shall decide whether to sustain or reverse the action of the supervisory committee or the credit union board. If the members sustain the action, they shall replace the suspended board member at the special members' meeting. If a supervisory committee suspends a majority of the credit union board under section 345(2), the remaining board members have general management of the affairs of the domestic credit union until the suspended board members are reinstated or replaced at the special members' meeting.
- (f) Suspend or remove a member of the supervisory committee for failure to perform his or her duties in accordance with this act, the certificate of organization, or the bylaws by a 2/3 vote of the credit union board.
- (g) By a majority vote, suspend or remove any officer from his or her duties as an officer.
- (6) A member of the credit union board or of the credit or supervisory committee, if any, shall not receive compensation for his or her service as a board or committee member.
- (7) If a loan made to or cosigned, endorsed, or guaranteed by a director or a member of the supervisory, credit, or other committee is more than 2 months delinquent, the individual is automatically removed from his or her position as director or committee member and he or she is ineligible to serve as a director or committee member for 2 years. The commissioner may waive the application of this provision in a given situation if the commissioner determines that it is in the best interests of the domestic credit union to do so.
- (8) A majority of the credit union board constitutes a quorum for the transaction of business.
- (9) Unless specifically prohibited by the bylaws, if this act requires or allows a credit union board to take an action at a meeting, the board may take that action without a meeting if a consent in writing setting forth the action taken is signed by all of the

directors entitled to vote on that matter. A written consent under this subsection shall contain 1 or more written approvals, each of which sets forth the action taken and bears the signature of 1 or more directors. The directors shall deliver their signed approvals to the secretary, and he or she shall file them in the corporate records of the domestic credit union. An action taken by written consent under this subsection is effective when all the directors have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors has the same effect as a unanimous vote, and the domestic credit union may represent that the action was approved by a unanimous vote in any document filed with the commissioner under this act.

(10) A director when elected or appointed shall take and subscribe an oath that he or she will diligently and honestly perform the duties of the office and will not knowingly violate, or permit to be violated, any provisions of this act. The secretary shall file the oaths in the corporate records of the domestic credit union.

490.343 Suspension or removal of members; majority of remaining members as quorum; appointment of temporary members.

Sec. 343. If 1 or more directors of a domestic credit union board are suspended or removed under this act, a majority of the remaining members of the board, including any replacement directors, constitute a quorum of the credit union board. If all of the directors of a domestic credit union are suspended or removed under this act, the commissioner shall appoint individuals to serve temporarily as directors until the suspensions or removals are terminated or until their successors are elected and take office.

490.344 Audits.

Sec. 344. (1) A domestic credit union with assets of \$5,000,000.00 or more as of the end of the last calendar year shall obtain at least an annual audit, conducted by a certified public accountant or other professionally qualified individual, who may be self-employed or employed by another person. A domestic credit union with assets of less than \$5,000,000.00 as of the end of the last calendar year shall do 1 of the following:

(a) If the credit union board does not proceed under subdivision (b), obtain at least an annual audit, conducted by a certified public accountant or other professionally qualified individual, who may be self-employed or employed by another person.

(b) If the domestic credit union has a supervisory committee, the credit union board may authorize the supervisory committee to conduct an annual audit of the domestic credit union.

(2) If a domestic credit union has a supervisory committee, the supervisory committee shall conduct or direct those supplementary audits, examinations, and verifications of members' accounts that it considers necessary or that the commissioner or the credit union board requires and submit reports of any supplementary audits to the credit union board.

(3) The supervisory committee or other auditor shall submit a written report of each annual audit to the credit union board. The domestic credit union shall provide a copy of the written report or a written summary of that report to any member who makes a written request, within 30 days after receipt of the request.

(4) An individual who is independent of a domestic credit union shall perform an audit of the domestic credit union under this section. An individual is not independent if any of the following apply at any time during the period covered by the audit or the period of the professional engagement or at the time the written audit report is presented:

(a) Unless the individual is a member of the supervisory committee and that committee is performing the audit under subsection (1), the individual performing the audit is an official or employee of the domestic credit union.