

(4) The authority shall submit an annual report to the legislature and the department showing the amount of money received under this act and how that money was spent.

(5) The money in the fund shall be expended pursuant to appropriation of the legislature by the authority in the following order of priority:

- (a) Providing for an annual state fair.
- (b) Maintaining the state exposition and fairgrounds.
- (c) Any other purpose authorized under this act.

### **285.175 Payments to exhibitors and vendors; appropriation; amount to Lake Superior State University for grant.**

Sec. 15. (1) For the fiscal year ending September 30, 2004, there is appropriated \$625,000.00 from the state exposition and fairgrounds fund for Michigan state fair payment of premiums to exhibitors and for payments due to vendors and others regarding outstanding invoices for the annual state fair held in calendar year 2004. Payment for premiums to exhibitors shall be made before payment to vendors and others.

(2) For the fiscal year ending September 30, 2005, there is appropriated \$192,700.00 from the general fund to Lake Superior State University for an infrastructure, technology, equipment, and maintenance grant.

### **285.175a Demolition of building or structure.**

Sec. 15a. The authority may demolish or permit the demolition of any building or structure on the state exposition and fairgrounds that is determined by the authority to be unsuitable for uses consistent with the holding of the state fair.

### **285.175b Publication of newsletter; posting minutes on website; establishment of local neighborhood advisory council.**

Sec. 15b. (1) The authority shall develop a newsletter to be published not less often than twice per calendar year for residents of the surrounding area of the state exposition and fairgrounds. The authority shall make the newsletter available electronically on its website and, if requested, by mail.

(2) The minutes of the meeting of the authority board shall be posted on the authority's website.

(3) The authority shall establish a local neighborhood advisory council for the purpose of public input on the authority's activities.

### **Effective date of certain sections.**

Enacting section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14a, and 15a of the Michigan exposition and fairgrounds act, 1978 PA 361, MCL 285.161, 285.162, 285.163, 285.164, 285.165, 285.166, 285.167, 285.168, 285.169, 285.170, 285.171, 285.172, 285.173, 285.174a, and 285.175a, as amended by this amendatory act, and section 15b of the Michigan exposition and fairgrounds act, 1978 PA 361, as added by this amendatory act, take effect March 1, 2005.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 469]****(SB 576)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 20145 and 20161 (MCL 333.20145 and 333.20161), section 20145 as amended by 2002 PA 683 and section 20161 as amended by 2004 PA 393.

*The People of the State of Michigan enact:*

**333.20145 Construction permit; certificate of need as condition of issuance; rules; information required for project not requiring certificate of need; review and approval of architectural plans and narrative; rules; waiver; fee; “capital expenditure” defined.**

Sec. 20145. (1) Before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of \$1,000,000.00 or more, a person shall obtain a construction permit from the department. The department shall not issue the permit under this subsection unless the applicant holds a valid certificate of need if a certificate of need is required for the project pursuant to part 222.

(2) To protect the public health, safety, and welfare, the department may promulgate rules to require construction permits for projects other than those described in subsection (1) and the submission of plans for other construction projects to expand or change service areas and services provided.

(3) If a construction project requires a construction permit under subsection (1) or (2), but does not require a certificate of need under part 222, the department shall require the applicant to submit information considered necessary by the department to assure that the capital expenditure for the project is not a covered capital expenditure as defined in section 22203(9).

(4) If a construction project requires a construction permit under subsection (1), but does not require a certificate of need under part 222, the department shall require the

applicant to submit information on a 1-page sheet, along with the application for a construction permit, consisting of all of the following:

- (a) A short description of the reason for the project and the funding source.
- (b) A contact person for further information, including address and phone number.
- (c) The estimated resulting increase or decrease in annual operating costs.
- (d) The current governing board membership of the applicant.
- (e) The entity, if any, that owns the applicant.

(5) The information filed under subsection (4) shall be made publicly available by the department by the same methods used to make information about certificate of need applications publicly available.

(6) The review and approval of architectural plans and narrative shall require that the proposed construction project is designed and constructed in accord with applicable statutory and other regulatory requirements. In performing a construction permit review for a health facility or agency under this section, the department shall, at a minimum, apply the standards contained in the document entitled “Minimum Design Standards for Health Care Facilities in Michigan” published by the department and dated March 1998. The standards are incorporated by reference for purposes of this subsection. The department may promulgate rules that are more stringent than the standards if necessary to protect the public health, safety, and welfare.

(7) The department shall promulgate rules to further prescribe the scope of construction projects and other alterations subject to review under this section.

(8) The department may waive the applicability of this section to a construction project or alteration if the waiver will not affect the public health, safety, and welfare.

(9) Upon request by the person initiating a construction project, the department may review and issue a construction permit to a construction project that is not subject to subsection (1) or (2) if the department determines that the review will promote the public health, safety, and welfare.

(10) The department shall assess a fee for each review conducted under this section. The fee is .5% of the first \$1,000,000.00 of capital expenditure and .85% of any amount over \$1,000,000.00 of capital expenditure, up to a maximum of \$60,000.00.

(11) As used in this section, “capital expenditure” means that term as defined in section 22203(2), except that it does not include the cost of equipment that is not fixed equipment.

**333.20161 Fees and assessments for health facility and agency licenses and certificates of need; medicaid reimbursement rates; appropriations to department of community health; use of quality assurance assessment; “medicaid” defined.**

Sec. 20161. (1) The department shall assess fees and other assessments for health facility and agency licenses and certificates of need on an annual basis as provided in this article. Except as otherwise provided in this article, fees and assessments shall be paid in accordance with the following schedule:

- (a) Freestanding surgical outpatient facilities ..... \$238.00 per facility.
- (b) Hospitals ..... \$8.28 per licensed bed.
- (c) Nursing homes, county medical care facilities, and  
hospital long-term care units..... \$2.20 per licensed bed.
- (d) Homes for the aged..... \$6.27 per licensed bed.
- (e) Clinical laboratories ..... \$475.00 per laboratory.

(f) Hospice residences .....	\$200.00 per license survey; and \$20.00 per licensed bed.
(g) Subject to subsection (13), quality assurance assessment for nongovernmentally owned nursing homes and hospital long-term care units .....	an amount resulting in not more than 6% of total industry revenues.
(h) Subject to subsection (14), quality assurance assessment for hospitals .....	at a fixed or variable rate that generates funds not more than the maximum allowable under the federal matching requirements, after consideration for the amounts in subsection (14)(a) and (j).

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX of the social security act, the hospital shall pay a license fee surcharge of \$23.00 per bed. As used in this subsection, “title XVIII” and “title XIX” mean those terms as defined in section 20155.

(3) The base fee for a certificate of need is \$1,500.00 for each application. For a project requiring a projected capital expenditure of more than \$500,000.00 but less than \$4,000,000.00, an additional fee of \$4,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of \$4,000,000.00 or more, an additional fee of \$7,000.00 shall be added to the base fee. The department of community health shall use the fees collected under this subsection only to fund the certificate of need program. Funds remaining in the certificate of need program at the end of the fiscal year shall not lapse to the general fund but shall remain available to fund the certificate of need program in subsequent years.

(4) If licensure is for more than 1 year, the fees described in subsection (1) are multiplied by the number of years for which the license is issued, and the total amount of the fees shall be collected in the year in which the license is issued.

(5) Fees described in this section are payable to the department at the time an application for a license, permit, or certificate is submitted. If an application for a license, permit, or certificate is denied or if a license, permit, or certificate is revoked before its expiration date, the department shall not refund fees paid to the department.

(6) The fee for a provisional license or temporary permit is the same as for a license. A license may be issued at the expiration date of a temporary permit without an additional fee for the balance of the period for which the fee was paid if the requirements for licensure are met.

(7) The department may charge a fee to recover the cost of purchase or production and distribution of proficiency evaluation samples that are supplied to clinical laboratories pursuant to section 20521(3).

(8) In addition to the fees imposed under subsection (1), a clinical laboratory shall submit a fee of \$25.00 to the department for each reissuance during the licensure period of the clinical laboratory’s license.

(9) The cost of licensure activities shall be supported by license fees.

(10) The application fee for a waiver under section 21564 is \$200.00 plus \$40.00 per hour for the professional services and travel expenses directly related to processing the application. The travel expenses shall be calculated in accordance with the state standardized travel regulations of the department of management and budget in effect at the time of the travel.

(11) An applicant for licensure or renewal of licensure under part 209 shall pay the applicable fees set forth in part 209.

(12) Except as otherwise provided in this section, the fees and assessments collected under this section shall be deposited in the state treasury, to the credit of the general fund.

(13) The quality assurance assessment collected under subsection (1)(g) and all federal matching funds attributed to that assessment shall be used only for the following purposes and under the following specific circumstances:

(a) The quality assurance assessment and all federal matching funds attributed to that assessment shall be used to finance medicaid nursing home reimbursement payments. Only licensed nursing homes and hospital long-term care units that are assessed the quality assurance assessment and participate in the medicaid program are eligible for increased per diem medicaid reimbursement rates under this subdivision.

(b) The quality assurance assessment shall be implemented on May 10, 2002.

(c) The quality assurance assessment is based on the number of licensed nursing home beds and the number of licensed hospital long-term care unit beds in existence on July 1 of each year, shall be assessed upon implementation pursuant to subdivision (b) and subsequently on October 1 of each following year, and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed.

(d) Beginning October 1, 2007, the department shall no longer assess or collect the quality assurance assessment or apply for federal matching funds.

(e) Upon implementation pursuant to subdivision (b), the department of community health shall increase the per diem nursing home medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the medicaid nursing home reimbursement payment increase financed by the quality assurance assessment.

(f) The department of community health shall implement this section in a manner that complies with federal requirements necessary to assure that the quality assurance assessment qualifies for federal matching funds.

(g) If a nursing home or a hospital long-term care unit fails to pay the assessment required by subsection (1)(g), the department of community health may assess the nursing home or hospital long-term care unit a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(h) The medicaid nursing home quality assurance assessment fund is established in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment with the state treasurer for deposit in the medicaid nursing home quality assurance assessment fund.

(i) The department of community health shall not implement this subsection in a manner that conflicts with 42 USC 1396b(w).

(j) The quality assurance assessment collected under subsection (1)(g) shall be prorated on a quarterly basis for any licensed beds added to or subtracted from a nursing home or hospital long-term care unit since the immediately preceding July 1. Any adjustments in payments are due on the next quarterly installment due date.

(k) In each fiscal year governed by this subsection, medicaid reimbursement rates shall not be reduced below the medicaid reimbursement rates in effect on April 1, 2002 as a direct result of the quality assurance assessment collected under subsection (1)(g).

(l) In fiscal year 2004-2005, \$21,900,000.00 of the quality assurance assessment collected pursuant to subsection (1)(g) shall be appropriated to the department of community health to support medicaid expenditures for long-term care services. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

(14) The quality assurance dedication is an earmarked assessment collected under subsection (1)(h). That assessment and all federal matching funds attributed to that assessment shall be used only for the following purposes and under the following specific circumstances:

(a) Part of the quality assurance assessment shall be used to maintain the increased medicaid reimbursement rate increases as provided for in subdivision (d). A portion of the funds collected from the quality assurance assessment may be used to offset any reduction to existing intergovernmental transfer programs with public hospitals that may result from implementation of the enhanced medicaid payments financed by the quality assurance assessment. Any portion of the funds collected from the quality assurance assessment reduced because of existing intergovernmental transfer programs shall be used to finance medicaid hospital appropriations.

(b) The quality assurance assessment shall be implemented on October 1, 2002.

(c) The quality assurance assessment shall be assessed on all net patient revenue, before deduction of expenses, less medicare net revenue, as reported in the most recently available medicare cost report and is payable on a quarterly basis, the first payment due 90 days after the date the assessment is assessed. As used in this subdivision, "medicare net revenue" includes medicare payments and amounts collected for coinsurance and deductibles.

(d) Upon implementation pursuant to subdivision (b), the department of community health shall increase the hospital medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment is assessed and collected, the department of community health shall maintain the hospital medicaid reimbursement rate increase financed by the quality assurance assessments.

(e) The department of community health shall implement this section in a manner that complies with federal requirements necessary to assure that the quality assurance assessment qualifies for federal matching funds.

(f) If a hospital fails to pay the assessment required by subsection (1)(h), the department of community health may assess the hospital a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(g) The hospital quality assurance assessment fund is established in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment with the state treasurer for deposit in the hospital quality assurance assessment fund.

(h) In each fiscal year governed by this subsection, the quality assurance assessment shall only be collected and expended if medicaid hospital inpatient DRG and outpatient reimbursement rates and disproportionate share hospital and graduate medical education payments are not below the level of rates and payments in effect on April 1, 2002 as a direct result of the quality assurance assessment collected under subsection (1)(h), except as provided in subdivision (i).

(i) The quality assurance assessment collected under subsection (1)(h) shall no longer be assessed or collected after September 30, 2007, or in the event that the quality assurance assessment is not eligible for federal matching funds. Any portion of the quality assurance assessment collected from a hospital that is not eligible for federal matching funds shall be returned to the hospital.

(j) In fiscal year 2004-2005, \$18,900,000.00 of the quality assurance assessment collected pursuant to subsection (1)(h) shall be appropriated to the department of community health to support medicaid expenditures for hospital services and therapy. These funds shall offset an identical amount of general fund/general purpose revenue originally appropriated for that purpose.

(15) The quality assurance assessment provided for under this section is a tax that is levied on a health facility or agency.

(16) As used in this section, “medicaid” means that term as defined in section 22207.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 470]**

**(HB 6009)**

AN ACT to amend 1935 PA 220, entitled “An act to provide family home care for children committed to the care of the state, to create the Michigan children’s institute under the control of the Michigan social welfare commission, to prescribe the powers and duties thereof, and to provide penalties for violations of certain provisions of this act,” by amending sections 3 and 9 (MCL 400.203 and 400.209), section 3 as amended by 1988 PA 225.

*The People of the State of Michigan enact:*

**400.203 Provisions for admission of child under 17 to Michigan children’s institute.**

Sec. 3. (1) A child under 17 years of age, provision for whose support and education has been made under regulations of the family independence agency, may be admitted to the Michigan children’s institute by commitment to the family independence agency. All children committed to the Michigan children’s institute shall be considered committed to the family independence agency and shall be subject to review by the juvenile division of the probate court under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32. The superintendent of the institute shall represent the state as guardian of each child committed beginning with the day the child is admitted and continuing until the child is 19, unless the superintendent or the family independence agency discharges the child sooner as provided in section 8 or 9. Wherever commitment to the Michigan children’s institute is mentioned in any law of this state, it shall be



construed to mean commitment to the family independence agency. A child may be committed to the family independence agency by either of the following:

(a) By the juvenile division of the probate court, if the child is within the court's jurisdiction under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(b) By the probate court, if the child is a ward of the court and the court has denied an order of adoption for the child.

(c) By observation order. If a child has been decreed to be a ward of the probate court or the juvenile division of the probate court has acquired formal jurisdiction of a child, and it appears to the probate court that, because of the circumstances of the case or because the child's condition might be benefited, the court may make a temporary commitment to the family independence agency and direct that the child be taken to a facility of the Michigan children's institute for observation for a period not to exceed 90 days. Before the expiration of this order of observation, the superintendent of the institute shall report to the probate court the results of the observation of the child. If the superintendent reports to the probate court that the order of observation should be extended or that the child is in need of treatment for emotional disturbance that does not require hospital care and for which the institute has facilities, then the court may extend the temporary commitment and continue the observation order or establish a treatment period for the child to any date prior to the nineteenth birthday of the child. If the child has ceased to be a ward of the court, written consent of the person or persons lawfully having custody of the child shall be secured. Before the expiration of this extended order of observation or treatment, the superintendent shall report to the probate court the results of the observation or treatment of the child and an opinion stating what disposition can be made of the child. Before any child is sent to a facility of the institute for observation, the superintendent of the institute shall notify the probate court that there is room to receive the child and shall designate the facility of the institute for the reception of the child. The commission may by regulation establish conditions for the reimbursement of the expense of caring for the child while under the supervision of the institute if the parents or other persons responsible for the child's support are financially able to pay reasonable costs of the child's care.

(2) The superintendent of the institute has the power to make decisions on behalf of a child committed to the institute. The attorney general or his or her representative shall represent the Michigan children's institute superintendent in any court proceeding in which the superintendent considers such representation necessary to carry out his or her duties under this act.

#### **400.209 Committed children; adoption, marriage, emancipation; consent by superintendent; preliminary consent denial review process.**

Sec. 9. (1) The superintendent of the institute is authorized to consent to the adoption, marriage, or emancipation of any child who may have been committed to the institute, according to the laws for the adoption, marriage, or emancipation of minors. On such adoption, marriage, or emancipation, the child so adopted, married, or emancipated shall cease to be a ward of the state.

(2) On the effective date of the amendatory act that added this subsection, the family independence agency shall discontinue the Michigan children's institute preliminary consent denial review process.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.



**[No. 471]****(HB 6284)**

AN ACT to amend 2003 PA 215, entitled “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,” by amending sections 102, 104, 201, 203, 212, 214, 217, 234, 301, 302, 304, 307, 331, 341, 342, 345, 352, 357, 371, 373, 374, 382, 386, 401, 402, 407, and 423 (MCL 490.102, 490.104, 490.201, 490.203, 490.212, 490.214, 490.217, 490.234, 490.301, 490.302, 490.304, 490.307, 490.331, 490.341, 490.342, 490.345, 490.352, 490.357, 490.371, 490.373, 490.374, 490.382, 490.386, 490.401, 490.402, 490.407, and 490.423).

*The People of the State of Michigan enact:*

**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 labor and economic growth.

(g) “Corporate credit union” means a credit union whose field of membership consists primarily of other credit unions.

(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 a corporation or other organization that is engaged primarily in providing 1 or more of the products or services described in section 407 to credit unions or their members and that a domestic credit union may organize, invest in, or lend to under section 401(2)(gg).

(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.

#### **490.104 “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 any assumed names, 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.

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

Sec. 201. (1) The 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 \$1.00 or more than \$3.50 per \$1,000.00 of assets up to \$500,000.00.

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

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

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

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

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

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

(4) Each domestic credit union shall report its financial condition as required by the 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 during the normal business hours of the commissioner. 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.

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

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

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

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

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

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

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

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

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

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

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

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

#### **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. (1) 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.

(2) If a judgment of conviction with respect to an offense described in subsection (1) is entered against a person, after 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 any domestic credit union. If an order described in this subsection is issued, the person must obtain the prior consent of the commissioner before participating in any manner in the conduct of the affairs of any domestic credit union.

(3) A person removed from office under subsection (2) is removed when a copy of the order is served upon the domestic credit union.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The transfer or 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.

#### **490.301 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 under this act.

(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 assumed 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 under this act.

#### **490.304 Principal place of business; branches; service centers; assumed 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 names and titles of the officials and senior management employees of the domestic credit union with the commissioner on a form prescribed by the commissioner. If the name or title of an official or senior management employee of a domestic credit union changes, the credit union shall provide the commissioner 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 assumed names:

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

(b) The commissioner may deny a domestic credit union the right to use an assumed name or terminate a credit union's right to use an assumed name if the commissioner determines that the assumed name is confusing or misleading or for any other reason.

(c) A domestic credit union using an assumed name shall clearly and conspicuously disclose the name of the credit union and the assumed name in all signs, advertising, mailings, and similar materials and shall clearly and conspicuously disclose the assumed name and the 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) An assumed name may not contain the phrase "credit union".

#### **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 31 USC 5318(g), a domestic credit union or an official, 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.

#### **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 or employee 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 officials and employees 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 approve of the dissolution and the plan of dissolution by a 2/3 vote of members voting. 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.

#### **490.341 Organizational meeting; annual meeting; membership; director; committee members; qualifications; notice of meeting; 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 organized under this act 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, supervisory committee member, or credit committee member of a domestic credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the 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, committee member, 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, committee member, 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 1 or more of the requirements of subsection (8) while serving as a director, supervisory committee member, or credit committee member of a domestic credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the 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 section 423(12) and 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) An individual elected or appointed to serve as a director, supervisory committee member, or credit committee member of a domestic credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations



of the domestic credit union, 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.

#### **490.345 Supervisory committee; duties; appointment; vacancies.**

Sec. 345. (1) A domestic credit union may have a supervisory committee. If authorized by the bylaws, 1 director who is not an officer of the domestic credit union may serve as a member of the supervisory committee. Otherwise, a director may not serve as a member of the supervisory committee.

(2) If a domestic credit union has a supervisory committee, the supervisory committee may do any of the following:

(a) By majority vote, call a special meeting of the members to consider any matter submitted to the special meeting of the members by the committee.

(b) By a unanimous vote, suspend any member of the credit committee and report the suspension and the reason for the suspension to the credit union board. At its next meeting, the credit union board shall vote on whether to remove or reinstate the suspended credit committee member. A  $\frac{2}{3}$  vote of the credit union board is required to remove the suspended credit committee member.

(c) By a unanimous vote, suspend a member of the credit union board for cause.

(d) Access any credit union records.

(3) If a domestic credit union has a supervisory committee and the members elect the committee, the committee shall fill vacancies on the committee until the next annual meeting of the members. If a domestic credit union has a supervisory committee and the credit union board appoints the committee, the credit union board shall fill vacancies on the supervisory committee.

**490.352 Domestic credit union; membership; composition; field of membership; application; approval by commissioner; revision; extension.**

Sec. 352. (1) The membership of a domestic credit union is comprised of each person that organized the domestic credit union, and each person that meets all of the following:

(a) The person belongs to a group of persons that is within the domestic credit union's field of membership.

(b) The person is accepted by the domestic credit union as a member.

(c) The person pays any entrance or membership fee required by the domestic credit union.

(d) The person pays for 1 or more shares, including a membership share if the domestic credit union requires ownership of a membership share.

(e) The person complies with any other requirement for membership contained in the domestic credit union's bylaws.

(2) The credit union board of a domestic credit union shall establish the field of membership for a domestic credit union. The field of membership shall consist of 1 or more of the following:

(a) One or more groups of any size that have a common bond of occupation, association, or religious affiliation.

(b) One or more groups composed of persons whose common bond is residence, employment, or place of religious worship within a geographic area composed of 1 or more school districts, counties, cities, villages, or townships.

(c) One or more groups whose common bond is common interests, activities, or objectives.

(3) One or more credit unions may serve 1 or more groups described in subsection (2).

(4) A credit union board that establishes or revises the field of membership of the domestic credit union shall submit the proposed or revised field of membership to the commissioner for approval on an application form provided by the commissioner. The commissioner shall promptly notify an applicant when he or she determines that an application is complete and the date of that determination. If the application seeks to revise a field of membership to include 1 or more groups described in subsection (2)(b), the commissioner may require that the applicant provide additional information regarding the common bond of persons within the proposed geographical area or areas. The commissioner shall establish standards for obtaining this additional information.

(5) The commissioner has 60 days after the date of determination described in subsection (4) to approve or disapprove of an application under subsection (4). In reviewing an application under subsection (4), the commissioner must first determine whether the proposed field of membership meets the common bond requirements of subsection (2). If the commissioner determines that the proposed field of membership does meet the common bond requirements of subsection (2), then the commissioner may only disapprove of the application on the basis of safety and soundness of the domestic credit union. If the commissioner does not approve or disapprove of the application, or extend the 60-day period under subsection (6), within that 60-day period, the application is considered approved as of the day after the 60-day period.

(6) The commissioner may extend the 60-day period described in subsection (5) for 1 or more additional 60-day periods for administrative reasons or to allow for public comment if the commissioner delivers notice of each 60-day extension in writing to the domestic

credit union before the 60-day period and any prior 60-day extensions expire. An extension notice shall explain the reason for the extension. If the commissioner does not approve or disapprove of the application, or grant an additional 60-day extension, within a 60-day extension period, the application is considered approved as of the day after the 60-day extension period. The commissioner may grant any number of 60-day extensions, but the domestic credit union may treat any extension after the third 60-day extension as a disapproval of the application and may pursue any administrative or legal remedies available for a disapproval.

(7) If authorized in the bylaws of the domestic credit union, a member that is no longer in the field of membership of the domestic credit union because the field of membership is revised under this section, or the member leaves the field of membership, may continue as a member, on the same basis as any other member, or on a different basis if the bylaws establish a different basis for that continued membership.

(8) A domestic credit union shall respond to an application for membership within 30 calendar days after receiving it. If the domestic credit union determines that there is a sound business reason for the action, a domestic credit union may deny membership to any applicant for membership.

#### **490.357 Termination or withdrawal of member.**

Sec. 357. (1) A credit union board may terminate the membership of, or terminate some or all services to, a member who does any of the following:

(a) Causes a loss to the domestic credit union.

(b) Commits fraud or another misdeed against the domestic credit union or against a person on the premises of the domestic credit union.

(2) Pending action by the credit union board at its next regularly scheduled meeting, a domestic credit union may immediately suspend any credit union services to a member who does any of the following:

(a) Causes a loss to the domestic credit union.

(b) Commits fraud or another misdeed against the domestic credit union or against a person on the premises of the domestic credit union.

(3) A member may withdraw from a domestic credit union at any time, but the domestic credit union may require a notice of withdrawal from the withdrawing member as a condition of withdrawal.

(4) When money becomes available, and after deducting all amounts owed to the domestic credit union by the member, a domestic credit union shall pay a person whose membership is terminated or who is a withdrawing member any amounts paid on shares or as deposits of the member and any dividends or interest accrued on the shares or deposits before the date of payment.

(5) Unless the withdrawal of a member occurs on a maturity date or within 7 days after a maturity date, a domestic credit union may require that a withdrawing member give a 60-day notice of intention to withdraw shares or a 30-day notice of intention to withdraw deposits. A domestic credit union that requires a notice of intention to withdraw may wait until the expiration of the applicable notice period before complying with subsection (4). A domestic credit union may waive an applicable notice period for a specific member or account in writing.

(6) After a termination or withdrawal under this section, the former member has no rights in the domestic credit union, but the termination or withdrawal does not release the former member from any remaining liability to the domestic credit union.

**490.371 Merger of 1 or more credit unions.**

Sec. 371. (1) Two or more domestic credit unions may merge into 1 of the credit unions, or into a newly formed domestic credit union, if all of the following are met:

(a) The credit union board of each constituent credit union by majority vote adopts a plan of merger that includes all of the following:

(i) The name of each constituent credit union and the name of the surviving credit union.

(ii) The terms and conditions of the proposed merger, including the manner and basis of converting the member shares in each constituent credit union into member shares in the surviving credit union, or into cash or other property, or into a combination of shares, cash, or other property.

(iii) A statement of any amendment to the certificate of organization of the surviving credit union affected by the merger or a statement that no changes are to be made in the certificate of organization of the surviving credit union.

(iv) Any other provisions concerning the proposed merger that the constituent credit unions consider necessary or desirable.

(b) If the credit union board of each constituent credit union adopts the plan of merger, the constituent credit unions submit the plan of merger to the commissioner. Each constituent credit union shall submit the time and place of the meeting of the credit union board at which it approved the plan, the vote of the directors on approving the plan, and a copy of the resolution of the credit union board approving the plan to the commissioner with the plan of merger.

(c) Subject to subsection (6), the members of each constituent credit union except the surviving credit union approve the plan of merger, at a special membership meeting called for that purpose or by mail ballot. If the vote is held at a special membership meeting, the credit union board shall provide each member with written notice of the meeting that states the purpose of the meeting, at least 10 days and not more than 30 days before the meeting. The plan of merger is approved if a majority of the members of the constituent credit union who vote on the merger vote in favor of the merger.

(d) If the membership of a constituent credit union approves of a plan of merger under subdivision (c), the credit union shall notify the commissioner that the plan of merger is approved, the vote by which the members approved the plan, and a copy of the meeting notice if the plan was approved at a special membership meeting or the ballot and mailing date and closing date if the plan was approved by mail ballot of the members.

(e) The commissioner grants final approval of the plan of merger. The commissioner shall grant final approval of the plan if all of the requirements of subdivisions (a) to (d) are met.

(2) One or more domestic credit unions may merge with 1 or more foreign credit unions if both of the following are satisfied:

(a) The merger is permitted by the law of the jurisdiction under whose law each foreign constituent credit union is organized and each foreign constituent credit union complies with that law in effecting the merger.

(b) Each domestic constituent credit union complies with subsection (1).

(3) If a plan of merger under subsection (1) or (2) is approved, each constituent credit union shall execute and file a certificate of merger with the commissioner that contains all of the following:

(a) The statements required in subsection (1)(a)(i) and (iii).

(b) A statement that the plan of merger has been approved by the members of the constituent credit unions required to vote under subsection (1)(c).

(c) A statement of any assumed names the surviving credit union will use in this state if the commissioner approves. The statement shall specify each new assumed name of the surviving credit union, each current assumed name the surviving entity retains, and each assumed name transferred to the surviving entity from another constituent credit union.

(d) The effective date of the merger, if later than the date the certificate of merger is filed. The commissioner shall not accept a certificate of merger and the merger is not effective if an effective date is specified that is more than 90 days after the date of filing.

(4) When a merger takes effect, all of the following apply:

(a) Every other constituent credit union merges into the surviving credit union and the separate existence of every constituent credit union except the surviving credit union ceases.

(b) All property, debts, causes of action, and other interests of, belonging to, or due to each constituent credit union are vested in the surviving credit union without further act or deed and without reversion or impairment.

(c) The surviving credit union has all of the liabilities of each constituent credit union.

(d) A proceeding pending against any constituent credit union may be continued as if the merger had not occurred or the surviving credit union may be substituted in the proceeding for the constituent credit union if the existence of the constituent credit union ceased.

(e) The certificate of organization of the surviving credit union is amended to the extent provided in the certificate of merger.

(f) The membership shares in each constituent credit union are converted into membership shares in the surviving credit union, cash, or other property as provided in the plan of merger. If a person is a member of more than 1 of the constituent credit unions, the person is entitled to only 1 membership in the surviving credit union.

(g) The surviving credit union is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a domestic constituent credit union.

(5) If the surviving credit union in a merger under subsection (2) is a foreign credit union, and the surviving credit union transacts business in this state, it shall comply with the provisions of this act concerning foreign credit unions.

(6) The commissioner may waive the membership vote described in subsection (1)(c) for a constituent credit union if he or she determines that it is in the best interests of the membership of the constituent credit union or that the constituent credit union is insolvent or in imminent danger of becoming insolvent.

(7) Credit unions with different fields of membership may merge under this section.

### **490.373 Conversion of domestic credit union into mutual savings bank or mutual savings association.**

Sec. 373. (1) A domestic credit union may convert into a mutual savings bank or mutual savings association if all of the following are met:

(a) At least 30 days before voting on a plan of conversion under subdivision (b), the credit union board gives written notice to the credit union's members that it is considering a conversion. The credit union board shall mail the notice to the credit union's members

and shall not include any other mailing with the notice. The notice shall include all of the following:

(i) A brief statement of why the credit union board is considering the conversion.

(ii) A brief statement of the major positive and negative effects of the proposed conversion.

(iii) A request for members' written comments on the proposed conversion.

(b) The credit union board approves of a plan of conversion and files the plan of conversion with the commissioner. An affirmative vote of 2/3 of the entire credit union board is required to approve a plan of conversion. The plan of conversion shall meet all of the following:

(i) The conversion plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion and contains a statement indicating any material differences in powers between a credit union and a mutual savings bank or mutual savings association.

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

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

(iv) After conversion, the mutual savings bank or mutual savings association is likely to be economically viable.

(c) The credit union board shall call a special meeting of the members to vote on the conversion plan and mail to each member notice of the meeting and proposed conversion 90 days before the date of the special meeting. The notice shall include all of the following:

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

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

(iii) A statement that any interested person may obtain more detailed information about the conversion 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 conversion 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 conversion.

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

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

(vii) Any other information required by the commissioner.

(d) At least 60 days before the special meeting described in subdivision (c), the credit union board posts a copy of the notice required in subdivision (c) in each branch, service center, or other location in this state where members may transact business with the credit union, in at least 12-point type, displayed prominently in an area visible to members before they transact business.

(e) At least 60 days before the special meeting described in subdivision (c), if the credit union conducts any member transactions through the use of an internet website, the

credit union board displays the information included in the notice required in subdivision (c) in a conspicuous location on that website.

(f) Thirty days before the special meeting of the members, the credit union board mails a notice of the meeting and proposed conversion. The notice shall include all of the information described in subdivision (c) for the 90-day notice 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.

(g) If the plan of conversion 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 conversion described in subdivision (c) for a notice under that subdivision.

(h) At a special meeting of members, the members, by a 2/3 vote of members voting, approve of the conversion and the plan of conversion. 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.

(i) 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 any state or federal regulatory authority with jurisdiction over the mutual savings bank or mutual savings association after the conversion and, if a holding company is to be formed in connection with the conversion, the regulations of the federal reserve board of governors or of the office of thrift supervision applicable to holding companies.

(iv) Verification that deposits in the converted mutual savings bank or mutual savings association qualify for federal insurance.

(2) If the requirements of this section 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 conversion plan was fair and lawful, the commissioner shall approve the conversion and the conversion is effective.

(3) Except as otherwise required by the commissioner, this section does not apply to a domestic credit union that submitted to the commissioner a plan of conversion into a mutual savings bank or mutual savings association before the effective date of this act.

#### **490.374 Conversion of domestic credit union into bank, stock savings bank, or stock savings and loan association.**

Sec. 374. (1) A domestic credit union may convert into a bank, stock savings bank, or stock savings and loan association if all of the following are met:

(a) At least 30 days before voting on a plan of conversion under subdivision (b), the credit union board gives written notice to the credit union's members that it is considering a conversion. The credit union board shall mail the notice to the credit union's members and shall not include any other mailing with the notice. The notice shall include all of the following:

(i) A brief statement of why the credit union board is considering the conversion.



(ii) A brief statement of the major positive and negative effects of the proposed conversion.

(iii) A complete and accurate description of the differences between a credit union and a bank, stock savings bank, or stock savings and loan association, as appropriate.

(iv) A request for members' written comments on the proposed conversion.

(b) By an affirmative vote of 2/3 of the entire credit union board, the credit union board approves of a plan of conversion and files the plan of conversion with the commissioner. The conversion plan shall include all of the following:

(i) The member eligibility record date and the subscription offering priority established in connection with any proposed stock offering.

(ii) A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a 3-year period following the conversion, and a justification for any proposed stock repurchases.

(iii) A full appraisal report, prepared by an independent appraiser, of the value of the credit union and the pricing of the stock to be sold in the conversion transaction.

(iv) A legal opinion that any proposed stock offering complies with state and federal law.

(v) Copies of notices to be provided to members under subdivisions (d) and (e).

(c) The commissioner grants preliminary approval of the plan of conversion approved by the credit union board. The commissioner shall review the contents of the plan and member comments on the plan and grant preliminary approval of the plan if the commissioner is satisfied of all of the following:

(i) The conversion plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion, contains a complete and accurate description of the differences between a credit union and a bank, stock savings bank, or stock savings and loan association, as appropriate, and contains a statement indicating any material differences in powers between a credit union and a bank, stock savings bank, or stock savings and loan association, as appropriate.

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

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

(iv) The conversion plan does not permit the converting credit union to loan funds or otherwise extend credit to any person to purchase the capital stock of the bank, stock savings bank, or stock savings and loan association.

(v) After conversion, the bank, stock savings bank, or stock savings and loan association is likely to be economically viable.

(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 conversion plan and mail to each member notice of the meeting and proposed conversion 90 days before the date of the special meeting. The notice shall include all of the following:

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

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

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

(iv) If the conversion plan includes a distribution of a portion of the credit union's net worth to members, a statement describing the amount of the distribution, the form of the distribution, and eligibility requirements to receive a distribution.

(v) The par value and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion.

(vi) A statement that savings and share account holders will continue to hold accounts in the converted bank, stock savings bank, or stock savings and loan association identical as to dollar amount and general terms, and that their accounts will continue to be insured.

(vii) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed before conversion.

(viii) A statement that the credit union board may substantively amend the proposed plan of conversion 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 conversion.

(ix) Instructions for obtaining a copy of the conversion plan.

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

(xi) Any other information required by the commissioner.

(e) At least 60 days before the special meeting described in subdivision (d), the credit union board posts a copy of the notice required in subdivision (d) in each branch, service center, or other location in this state where members may transact business with the credit union, in at least 12-point type, displayed prominently in an area visible to members before they transact business.

(f) At least 60 days before the special meeting described in subdivision (d), if the credit union conducts any member transactions through the use of an internet website, the credit union board displays the information included in the notice required in subdivision (d) in a conspicuous location on that website.

(g) Thirty days before the special meeting of the members, the credit union board mails a notice of the meeting and proposed conversion to the members. The notice shall include all of the information described in subdivision (d) for the 90-day notice 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.

(h) If the plan of conversion 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 conversion described in subdivision (d) for a notice under that subdivision.

(i) At a special meeting of members, the members, by a 2/3 vote of members voting, approve of the conversion and the plan of conversion. 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.

(j) 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 any state or federal regulatory authority with jurisdiction over the bank, stock savings bank, or stock savings and loan association after the conversion and, if a holding company is to be formed in connection with the conversion, the regulations of the federal reserve board of governors or of the office of thrift supervision applicable to holding companies.

(iv) Verification that deposits in the converted bank, stock savings bank, or stock savings and loan association qualify for federal insurance.

(2) If the requirements of this section and the regulations of the federal agency providing federal deposit insurance regarding mutual-to-stock conversions 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 conversion plan was fair and lawful, the commissioner shall approve the conversion and the conversion is effective.

#### **490.382 Fiscal year; accounting principles.**

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

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

#### **490.386 Establishment and maintenance of reserves.**

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

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

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

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

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

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

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

#### **490.401 Domestic credit union; powers.**

Sec. 401. (1) A domestic credit union has the powers described in this section, specified or implied by this act, and specified in any other law of this state.

(2) A domestic credit union has all of the following powers:

(a) To enter into contracts.

(b) To sue and be sued.

(c) To adopt and alter a seal.

(d) To individually or jointly with other credit unions, purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A domestic credit union shall depreciate or appreciate personal property in the manner and at the rates the commissioner prescribes by rule, order, or declaratory ruling.

(e) To sell, convey, lease, or otherwise dispose of, or assign, pledge, or create a security interest in, all or part of its tangible personal property, including property obtained as a result of a default of an obligation owed to the domestic credit union. A domestic credit union may finance the sale of its personal property to a person at a rate of interest that does not exceed the rate of interest permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864, for loans to its members for the purchase of equivalent property.

(f) To incur and pay necessary and incidental operating expenses.

(g) To receive the funds of its members either as payment on shares or as deposits. Subject to the limitation on payment of dividends in section 362, a domestic credit union may have 1 or more classes of share or deposit accounts in the classifications and form, under the terms and conditions and with liquidation priorities authorized by the credit union board, unless otherwise prescribed by law. A domestic credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment systems that the credit union board determines best serve the convenience and needs of its members.

(h) To charge fees in connection with shares, savings, extensions of credit, and other services by contract or agreement.

(i) To make secured or unsecured loans to any member, at fixed or variable interest rates, and take and hold any real or personal property as security. In establishing an interest rate, the domestic credit union shall consider the collateral provided, the creditworthiness of the borrower, the duration of the loan, and any other factor reasonably determined by the domestic credit union to affect the risks related to the loan.

(j) To borrow funds from any source. Funds borrowed under this subdivision are not deposits. The domestic credit union may secure a loan described in this subdivision with a pledge of some or all of the domestic credit union's assets.

(k) To make loans to a trade association of which it is a member.

(l) To provide debt counseling and other financial counseling services to its members. If the counseling includes debt management for a member and the member is delinquent in any indebtedness owed to the domestic credit union, the domestic credit union shall not charge that member, directly or indirectly, a fee for providing the counseling services.

(m) To disburse loan proceeds as the borrower directs.

(n) To act as trustee or custodian of and administer, for individuals or as part of an employer group plan, retirement accounts or other accounts that permit tax deferrals or provide other tax benefits under federal or state law.

(o) To act as agent for its members and depositors in the purchase, sale, or other disposition of securities, interests in mutual funds, and interests or participations in any other type of investment, if the purchase, sale, or other disposition is done solely for the accounts of its members and depositors and is done on a nonrecourse basis.

(p) To discount, sell, convey, or otherwise dispose of, or assign, pledge, or create a security interest in, all or part of its intangible personal property.

(q) To purchase any of the assets of another domestic credit union, or with the approval of the commissioner assume any of the liabilities of another domestic credit union.

(r) To make deposits in or loans to banks, savings banks, savings and loan associations, trust companies, and other credit unions, or purchase shares of mutual savings banks, mutual savings and loan associations, and other credit unions. A domestic credit union may also make deposits in, loans to, or purchase shares of a corporate credit union and invest funds as provided in section 431.

(s) To join, make deposits in or loans to, or purchase shares of any federal reserve bank, federal home loan bank, or central liquidity facility established under federal or state law.

(t) To hold membership in associations and organizations controlled by or fostering the interests of credit unions or in a central liquidity facility organized under federal or state law.

(u) To, if approved by the credit union board and not inconsistent with this act, engage in activities and programs of the federal government, a state, a territory of the United States, or an agency or political subdivision of the federal government or a state or territory of the United States.

(v) To receive funds as shares or deposits from a credit union, bank, savings bank, savings and loan association, or any other type of depository institution.

(w) To receive funds as shares or deposits from a retirement plan that serves all or any of the domestic credit union's members or potential members.

(x) To receive funds as shares or deposits from a public employee retirement system or plan.

(y) To lease tangible personal property to its members.

(z) To purchase, sell, pledge, discount, or otherwise acquire, or dispose of all or part of the obligations of its members in accordance with section 432. This subdivision does not apply to participation loans originated pursuant to section 423(7).

(aa) At the domestic credit union's expense, to purchase insurance for its members in connection with share, deposit, loan, or other accounts.

(bb) To establish, operate, participate in, or hold membership in systems that allow the transfer of credit union funds and funds of its members or other account holders by electronic or other means, including clearinghouse associations, data processing and other electronic networks, the federal reserve system, or any other payment or liquidity program and contract with outside vendors to process member payments, send or receive funds for member investments, or initiate and execute electronic funds transfers on behalf of its members.

(cc) To service loans sold by the domestic credit union, in whole or in part, to a third party.

(dd) To receive payments on shares or deposits from or make loans to the United States or an agency or instrumentality of the United States.

(ee) To act as a fiscal agent and maintain treasury tax and loan accounts of the United States.

(ff) To receive payments on shares or deposits from a state, a territory of the United States, or from an agency, political subdivision, or instrumentality of a state or territory of the United States. A domestic credit union may act as fiscal agent for, maintain tax and loan accounts of, and make loans to, an entity that the domestic credit union has authority to receive payments from under this subdivision.

(gg) To organize, invest in, and make loans to credit union service organizations. In addition to the activities described in section 407(1) or (2) for credit union service organizations, the commissioner shall determine the activities and services that fall within the meaning of this subdivision. Investments and loans described in this subdivision shall not in the aggregate exceed 12% of the assets of the domestic credit union, and without the prior approval of the commissioner shall not in the aggregate exceed 6% of the assets of the domestic credit union. A domestic credit union may not invest in or make loans to a credit union service organization under this subdivision unless the credit union service organization agrees in writing to allow the commissioner to conduct an examination of the credit union service organization to the same extent that the commissioner is authorized to examine credit unions and agrees in writing to make any reports to the commissioner that he or she requires.

(hh) To individually or jointly with other credit unions or other financial organizations, purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential business. A domestic credit union may use land and buildings for its principal place of business functions, a branch, a service center, or another facility used to conduct an activity in which it engages. A domestic credit union may rent excess space as a source of income. A domestic credit union shall depreciate or appreciate buildings owned by it in the manner and at the rates the commissioner may prescribe by rule, order, or declaratory ruling. A domestic credit union's investment or contractual obligations, direct, indirect, or contingent, in land and buildings under this subdivision may not exceed 5% of its assets without the prior approval of the commissioner. An agreement to acquire and hold buildings or land jointly with other credit unions or other financial organizations requires the prior approval of the commissioner. The commissioner shall act on a completed application within 30 days after the application is filed.

(ii) To own stock in a corporation that owns land or buildings used to provide a facility described in subdivision (hh), but ownership of the stock is an investment in the land and buildings for all purposes under subdivision (hh). If a domestic credit union owns less than 100% of the stock in a corporation described in this subdivision, the investment is a joint agreement that requires the commissioner's approval under subdivision (hh).

(jj) To sell, convey, lease, or otherwise dispose of, or assign, mortgage, pledge, or create a lien in, all or part of its land and buildings, including land and buildings obtained as a result of a default of an obligation owed to it, or stock in a corporation described in subdivision (ii). A domestic credit union may finance the sale of its land and buildings to any person at a rate of interest that does not exceed the rate of interest permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864, for loans to its members for the purchase of land and buildings.

(kk) Pursuant to a written agreement, to perform services for members of other domestic or foreign credit unions. A domestic credit union may allow other credit unions to perform services for its members pursuant to a written agreement. A domestic credit union shall perform services described in this subdivision in accordance with the laws of this state.

(ll) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(mm) To own an insurance agency in whole or in part as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(nn) To make charitable contributions if the individual contributions and the aggregate amount of the contributions are reasonable in amount.

(oo) To offer tax return preparation and filing services.

(pp) To contract with entities offering funds transfer services and provide those services to any person.

(qq) To receive payments on shares or deposits or make loans to corporations that are wholly owned by 1 or more of the types of entities from which the domestic credit union may receive payments on shares under subdivision (dd) or (ff).

(rr) To enter into marketing and other support arrangements to facilitate members' purchases of goods and services from third parties that may include compensation to the domestic credit union.

(ss) To purchase insurance policies and other investment products to fund deferred compensation arrangements for its employees. If the deferred compensation arrangement does not present a risk to the safety and soundness of the domestic credit union, the purchase of those investment products is not subject to the limitations of this act.

(tt) Subject to section 352, to establish and revise its field of membership.

(uu) Guarantee the signature of a member in connection with a transaction involving tangible or intangible property in which a member has or seeks to acquire an interest.

(vv) Perform any of the following services for a person who is not a member of the credit union if the service is performed under a contractual arrangement in which another financial organization performs the same service for the credit union's members:

(i) Cash advances.

(ii) Funds transfers.

(iii) Cashing travelers checks.

(iv) Any other service specified by the commissioner by rule, order, or declaratory ruling.

(ww) To perform any of the following services for any person in an underserved area or who does not have an established relationship with a financial institution:

(i) Cashing and selling checks, drafts, or money orders.

(ii) Purchasing and selling foreign currencies in exchange for United States currency.

(iii) Wire transfers.

#### **490.402 Corporate credit union; additional powers.**

Sec. 402. (1) A corporate credit union organized under this act has all of the following powers in addition to the powers granted by this act to all domestic credit unions:

(a) To accept funds, either as shares or deposits, from a domestic, foreign, or alien credit union, whether or not that credit union is a member of the corporate credit union.

(b) To make loans to or investments or deposits in a credit union, whether or not that credit union is a member of the corporate credit union.

(c) To make loans to or place deposits in a bank, savings bank, trust company, or savings and loan association chartered by this state, by another state or territory of the United States, or by the United States.



(d) To place deposits in a bank chartered under the laws of Canada or a member state of the European Union.

(e) To borrow from any source.

(f) To act as a fiscal agent for the United States, a state, or an agency or political subdivision of the United States or a state.

(g) To participate with any other credit union in making loans to its members or to members of the other participating credit union, on the terms and conditions to which the participating credit unions agree.

(h) To purchase, sell, and hold investment securities that are marketable obligations in the form of bonds, notes, or debentures and that are salable under ordinary circumstances. A corporate credit union board shall adopt a written investment policy and the corporate credit union shall make all investments and related contracts and agreements under this subdivision in accordance with that policy.

(i) To contract for penalties for loans paid before their scheduled maturity.

(j) To act as an intermediary of member and credit union funds.

(k) To act as an agent to pay, receive, and transfer assets and liabilities.

(l) To receive and hold securities and other assets.

(m) To provide payment systems services in conjunction with financial institutions or other vendors, or other correspondent services.

(n) To provide services to members involving investments and liquidity management.

(o) To engage in repurchase agreement transactions with broker-dealers.

(p) To purchase, sell, and hold financial derivatives.

(q) To exercise any other power approved by the commissioner by rule, order, or declaratory ruling.

(2) This act does not permit a corporate credit union organized under this act to make or participate in a loan to a natural person that has terms and conditions that would not otherwise be authorized for a loan to a natural person made by another domestic credit union.

#### **490.407 Credit union service organizations; organizing, investing, or loaning money; limitations; requirements.**

Sec. 407. (1) Subject to subsection (3), a domestic credit union may organize, invest in, or loan money to 1 or more credit union service organizations that engage primarily in providing 1 or more of the following products or services to credit unions:

(a) Automated information processing services.

(b) Share draft and other item processing.

(c) Credit and debit card services.

(d) Microfilm and microfiche services.

(e) Printing and supply services.

(f) Service center functions.

(g) Selling or leasing real estate.

(h) Automated teller machine and electronic funds transfer services.

(i) Collection activities.

(j) Personnel services.

- (k) Appraisal, closing, or other services in connection with real estate loan activities.
  - (l) Investment management, investment research, and other full service broker-dealer services, but not underwriting of investment securities.
  - (m) Property leasing to credit unions.
  - (n) Accounting and auditing services.
  - (o) Records retention and preservation.
  - (p) Security for data processing equipment and other credit union property.
  - (q) Architectural services, including, but not limited to, providing original designs, remodeling, and redesigning.
  - (r) Administration and other services related to commercial loans and participation loans.
  - (s) Providing management and operating services.
  - (t) Marketing services.
  - (u) Management, development, sale, or lease of fixed assets.
  - (v) Sale, lease, or servicing of computer hardware and software.
  - (w) Sale of repossessed property or other personal property of credit unions.
  - (x) Locator services.
  - (y) Credit analysis.
  - (z) Loan origination, processing, servicing, and sale.
  - (aa) Research services.
  - (bb) Developing and administering individual retirement accounts or Keogh (HR-10), deferred compensation, or other personnel benefit plans.
  - (cc) Property maintenance services.
  - (dd) Courier services.
  - (ee) If approved by the commissioner, any other product or service.
- (2) Subject to subsection (3), a domestic credit union may organize, invest in, or loan money to 1 or more credit union service organizations that engage primarily in providing 1 or more of the following products or services to credit unions or their members:
- (a) Equipment leasing and financing.
  - (b) Payroll services.
  - (c) Real estate brokerage services.
  - (d) Prepaid legal services.
  - (e) Motor vehicle purchasing services.
  - (f) Group travel services.
  - (g) Insurance, to the extent not prohibited by state law.
  - (h) Financial planning, investment counseling, or other financial services.
  - (i) Consumer purchasing referral services.
  - (j) Income tax services.
  - (k) Retirement counseling.
  - (l) Securities brokerage counseling.
  - (m) Estate planning.
  - (n) Personal property leasing.
  - (o) Service contracts or extended warranty contracts for motor vehicles, motorcycles, recreational vehicles, manufactured homes, boats, computers, or other personal property items.

(p) Investment management, investment research, or other full-service securities broker-dealer services, but not underwriting of investment securities.

(q) If approved by the commissioner, any other product or service.

(3) A domestic credit union may organize, invest in, or loan money to a credit union service organization described in subsection (1) or (2) only if all of the following are met:

(a) The credit union service organization is adequately capitalized or has a reasonable plan for adequate capitalization if it is to be formed or is newly formed.

(b) The credit union service organization is structured and operated as a separate legal entity from the domestic credit union.

(c) The domestic credit union obtains a written legal opinion that the credit union service organization is structured and operated in a manner that limits the domestic credit union's potential liability for the debts and liabilities of the credit union service organization to not more than the loss of money invested in or loaned to the credit union service organization by the domestic credit union.

(d) The credit union service organization agrees in writing to prepare financial statements and provide them to the domestic credit union at least quarterly.

(e) The credit union service organization agrees in writing to obtain an audit of the credit union service organization from a certified public accountant at least annually and provide a copy of each audit report to the domestic credit union.

(f) The credit union service organization operates in compliance with applicable federal and state laws.

(4) The credit union board of a domestic credit union that organizes, invests in, or lends money to a credit union service organization shall establish, in writing, the maximum percentage amount of assets that the domestic credit union may invest in or loan to the credit union service organization.

(5) The senior management employees of a domestic credit union shall not receive any salary, commission, investment income, or other income or compensation from a credit union service organization that is an affiliate of the domestic credit union.

(6) In determining compliance with the percentage limitations in section 401(2)(gg), all loans cosigned, endorsed, or otherwise guaranteed by a domestic credit union to credit union service organizations are included in determining the aggregate amount of loans by the domestic credit union.

(7) A domestic credit union shall follow generally accepted accounting principles in its accounting of its financial involvement in a credit union service organization.

**490.423 Loan conditions; repayment; costs; rates, terms, or conditions to officials or family member; open-end credit arrangements; joint loans; guaranteed federal or state loan program; reduced rate loans and extensions; restriction.**

Sec. 423. (1) A loan by a domestic credit union to a member shall conform to any conditions contained in the bylaws.

(2) A borrower may repay his or her loan from a domestic credit union in whole or in part at any time the domestic credit union is open for business or otherwise capable of receiving payment on the loan.

(3) A domestic credit union may contract with a borrower for the borrower to reimburse the domestic credit union for any specifically identified third party costs related to a loan originally paid by the domestic credit union, and for any amount specifically identified in the loan agreement as an incentive if the borrower prepays the loan in full within 3 years

of the date that the loan is made and the originally scheduled amortization period of the loan is more than 5 years.

(4) Except as provided in subsection (9), a domestic credit union shall not agree to rates, terms, or conditions on any loan or line of credit made to or endorsed or guaranteed by an official or an immediate family member of an official that are more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members. A domestic credit union shall not agree to rates, terms, and conditions on any loan or line of credit to any person that has a common ownership, investment, or other pecuniary interest in a business with an official or immediate family member of an official that are more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members.

(5) A domestic credit union shall process a loan to an official or employee in the same manner as a loan to other members, except that the applicant shall not participate in the approval process for his or her loan.

(6) A domestic credit union may provide open-end or closed-end credit arrangements for its members if the credit union board has established a policy for those credit arrangements. Unless prohibited by the agreement for the open-end credit arrangement, a domestic credit union may under an open-end credit arrangement unilaterally increase the approved limit or may increase the approved limit on the request of the member.

(7) A domestic credit union may participate in loans to credit union members jointly with other credit unions, credit union service organizations, or other financial institutions.

(8) A domestic credit union may participate in a guaranteed loan program of the federal or state government under the terms and conditions specified in the law establishing that program.

(9) A domestic credit union may offer reduced rate loans and other extensions of credit to its employees, other than employees who are directors, supervisory committee members, credit committee members, or members of any other committee that performs significant ongoing functions relating to the ongoing operations of the domestic credit union, under a policy adopted by its credit union board.

(10) The credit union board, or the credit committee if the domestic credit union has a credit committee that does not include any credit union employees, must approve of any loan or other extension of credit to or purchase of an obligation of the general manager.

(11) A domestic credit union shall not make a loan or extend a line of credit if an official or senior management employee will receive a commission, fee, or compensation other than salary if the loan or line of credit is approved.

(12) A domestic credit union shall not loan more than \$20,000.00 or 25% of its net worth, whichever is greater, to a borrower and any affiliates of the borrower. This subsection does not apply to a corporate credit union.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 472]**

**(HB 5920)**

AN ACT to amend 1980 PA 119, entitled "An act to prescribe a privilege tax for the use of public roads and highways of this state by motor carriers by imposing a specific tax upon the use of motor fuel within this state; to provide for certain credits against this tax

and certain mechanisms for paying, collecting, and enforcing this tax; to provide for the licensing of motor carriers and for exemptions from licensure; to require the keeping and providing for the examination of certain reports; to provide review procedures for the assessment of the tax and revocation of a license; to impose certain duties upon and confer certain powers to certain state departments and agencies; to prescribe certain penalties for the violation of this act; and to make appropriations,” by amending section 8 (MCL 207.218), as amended by 1996 PA 584.

*The People of the State of Michigan enact:*

**207.218 Leased commercial motor vehicles subject to act; lessor as motor carrier; exclusion by lessee of commercial motor vehicles from reports and liabilities; consolidated reports; primary liability; joint and several liability; limitation on aggregate taxes; international fuel tax agreement registration.**

Sec. 8. (1) Every qualified commercial motor vehicle leased to a motor carrier shall be subject to this act, to the same extent and in the same manner as qualified commercial motor vehicles owned by a motor carrier.

(2) A lessor of qualified commercial motor vehicles may be considered a motor carrier with respect to qualified commercial motor vehicles leased to others, if the lessor supplies or pays for the motor fuel consumed by the vehicles or bills rental or other charges calculated to include the cost of motor fuel. A lessee motor carrier may exclude a qualified commercial motor vehicle leased from others from the reports and liabilities required by this act if that qualified commercial motor vehicle has been leased from a lessor who is a motor carrier pursuant to this act and the lease agreement provides for the lessor to pay the cost of motor fuel and motor fuel taxes.

(3) Upon application by the licensed motor carrier, the department may authorize a licensed motor carrier leasing qualified commercial motor vehicles from 2 or more lessors to file consolidated reports for these lessors.

(4) This section shall govern the primary liability under this act of lessors and lessees of qualified commercial motor vehicles. For tax liabilities incurred before April 1, 2005 and tax liabilities incurred after April 1, 2007, if a lessor or lessee primarily liable fails, in whole or in part, to discharge his or her liability, the failing party and the other lessor or lessee party to the transaction shall be jointly and severally responsible and liable for compliance with this act and for the payment of tax due. However, the aggregate of taxes collected from a lessor and lessee by this state under this act shall not exceed the total amount of taxes due and costs and penalties imposed.

(5) For tax liabilities arising after April 1, 2005 and before April 1, 2007, if a lease agreement identifies a party responsible for the payment of taxes, the nonresponsible party under the lease shall obtain a copy of the responsible party's valid international fuel tax agreement registration and keep the copy on file. If the nonresponsible party does not obtain a copy of the responsible party's valid international fuel tax agreement registration and the responsible party fails in whole or in part to discharge his or her liability, then the responsible and nonresponsible parties shall be jointly and severally responsible and liable for compliance with this act and payment of tax due. If the lease agreement does not identify the party responsible for payment of fuel taxes under this act, then both parties shall be jointly and severally responsible and liable for compliance with this act and payment of tax due. However, the aggregate of taxes collected from a lessor and lessee by this state under this act shall not exceed the total amount of taxes due and costs and penalties imposed.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 473]****(HB 6310)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending section 19a of chapter XIIA (MCL 712A.19a), as amended by 2000 PA 46.

*The People of the State of Michigan enact:*

## CHAPTER XIIA

**712A.19a Permanency planning hearing; conditions; time limitation; reunion of child and family not required; purpose; notice; statement; return of child to parent; noncompliance with case service plan; other conditions as evidence; termination of parental rights to child; alternative placement plans; information considered as evidence.**

Sec. 19a. (1) Subject to subsection (2), if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter, but no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under subsection (2). A permanency planning hearing shall not be canceled or delayed beyond the number of months required by this subsection or days as required under subsection (2), regardless of whether there is a petition for termination of parental rights pending.

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(i) Murder of another child of the parent.

(ii) Voluntary manslaughter of another child of the parent.

(iii) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another

child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(iv) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.

(3) A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court.

(4) Not less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon all of the following:

(a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.

(b) The foster parent or custodian of the child.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(h) If the child is 11 years of age or older, the child.

(i) Other persons as the court may direct.

(5) If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(6) If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court shall order the agency to initiate proceedings to terminate parental rights to the child not later than 42 days after the permanency planning hearing, unless the court finds that initiating the termination of parental rights to the child is clearly not in the child's best interests.

(7) If the agency demonstrates under subsection (6) that initiating the termination of parental rights to the child is clearly not in the child's best interests, then the court shall order either of the following alternative placement plans:

(a) If the court determines that other permanent placement is not possible, the child's placement in foster care shall continue for a limited period to be stated by the court.

(b) If the court determines that it is in the child's best interests based upon compelling reasons, the child's placement in foster care may continue on a long-term basis.



(8) In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 474]**

**(HB 5668)**

AN ACT to amend 1993 PA 327, entitled "An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts," by amending sections 2, 8, 9, and 11 (MCL 205.422, 205.428, 205.429, and 205.431), sections 2, 8, and 9 as amended by 1997 PA 187.

*The People of the State of Michigan enact:*

**205.422 Definitions.**

Sec. 2. As used in this act:

(a) "Cigarette" means a roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

(b) "Commissioner" means the state treasurer.

(c) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

(d) "Counterfeit stamp" means any stamp, label, or print, indicium, or character, that evidences, or purports to evidence, the payment of any tax levied under this act and that has not been printed, manufactured, or made by authority of the department as provided in this act and has not been issued, sold, or circulated by the department.

(e) "Department" means the department of treasury.

(f) "Financially sound" means a determination by the department that the wholesaler or unclassified acquirer is able to pay for its stamps in the ordinary course of business based on criteria including, but not limited to, all of the following:

(i) Past filing and payment history with the department.

(ii) Outstanding liabilities.

(iii) Review of current financial statements including, but not limited to, balance sheets and income statements.

(iv) Duration that the wholesaler or unclassified acquirer has been licensed under this act.

(g) “Individual package” means an individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

(h) “Licensee” means a person licensed under this act.

(i) “Manufacturer” means a person who manufactures or produces a tobacco product.

(j) “Noncigarette smoking tobacco” means tobacco sold in loose or bulk form that is intended for consumption by smoking and includes roll-your-own cigarette tobacco.

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

(l) “Place of business” means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.

(m) “Retailer” means a person other than a transportation company who operates a place of business for the purpose of making sales of a tobacco product at retail.

(n) “Sale” means a transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

(o) “Secondary wholesaler” means a person who sells a tobacco product for resale, who purchases a tobacco product from a wholesaler or unclassified acquirer licensed under this act, and who maintains an established place of business in this state where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale, and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale.

(p) “Smokeless tobacco” means snuff, chewing tobacco, and any other tobacco that is intended to be consumed by means other than smoking.

(q) “Stamp” means a distinctive character, indication, or mark, as determined by the department, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by the department to indicate that the tax imposed under this act has been paid.

(r) “Stamping agent” means a wholesaler or unclassified acquirer other than a manufacturer who is licensed and authorized by the department to affix stamps to individual packages of cigarettes on behalf of themselves and other wholesalers or unclassified acquirers other than manufacturers.

(s) “Tobacco product” means cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.

(t) “Transportation company” means a person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(u) “Transporter” means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act. Transporter does not include an interstate commerce carrier licensed by the interstate commerce commission to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under this act.

(v) “Unclassified acquirer” means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167,

MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution. Unclassified acquirer also means a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer does not include a wholesaler.

(w) “Vending machine operator” means a person who operates 1 or more vending machines for the sale of a tobacco product and who purchases a tobacco product from a manufacturer, licensed wholesaler, or secondary wholesaler.

(x) “Wholesale price” means the actual price paid for a tobacco product, including any tax, by a wholesaler or unclassified acquirer to a manufacturer, excluding any discounts or reductions.

(y) “Wholesaler” means a person who purchases all or part of his or her tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, and who maintains an established business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

### **205.428 Personal liability for payment of tax; penalty; duties of manufacturer’s representative; violations as felony; violations as misdemeanor; enforcement.**

Sec. 8. (1) A person, other than a licensee, who is in control or in possession of a tobacco product contrary to this act, who after August 31, 1998 is in control or in possession of an individual package of cigarettes without a stamp in violation of this act, or who offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act, shall be personally liable for the tax imposed by this act, plus a penalty of 500% of the amount of tax due under this act.

(2) The department may permit a representative of a licensed manufacturer of tobacco products whose duties require travel in this state to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state. All 138,000 cigarettes must bear the stamp approved by the department or the tax indicia of another state, if any. The total value of tobacco products, excluding cigarettes, carried by a representative shall not exceed a wholesale value of \$5,000.00. A manufacturer shall notify the department of the manufacturer’s representatives that it currently employs who carry cigarettes or tobacco products other than cigarettes in performing work duties in this state. The manufacturer shall maintain a record of each transaction by the manufacturer’s representative for a period of 4 years immediately following the transaction and shall produce the records upon request of the state treasurer or the state treasurer’s authorized agent. Each record shall identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of and the identity of the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative of the manufacturer shall provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal. The retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer shall retain the copy of the record in the same place and for the same time period as other records required by this section. A representative shall not exchange, or otherwise dispose of, within this state tobacco products bearing the tax indicia of another

state or receive tobacco products bearing the tax indicia of another state from retailers located within this state. A representative who sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes that do not bear the stamp or other marking required by the department or sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes bearing the tax indicia of another state is guilty of a felony, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, or 3,000 or more counterfeit cigarettes is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

(4) A person who possesses, acquires, transports, or offers for sale contrary to this act 1,200 or more, but not more than 2,999, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of \$100.00 or more but less than \$250.00, or 1,200 or more, but not more than 2,999, counterfeit cigarettes, is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment of not more than 1 year, or both.

(5) A person who violates a provision of this act for which a criminal punishment is not otherwise provided is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 or 5 times the retail value of the tobacco products involved, whichever is greater, or imprisonment for not more than 1 year, or both.

(6) A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer's label on cigarettes or counterfeit cigarettes, is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than \$50,000.00.

(7) A person who falsely makes, counterfeits, or alters a license, vending machine disc, or marker, or who purchases or receives a false or altered license, vending machine disc, or marker, or who assists in or causes to be made a false or altered license, vending machine disc, or marker, or who possesses a device used to forge, alter, or counterfeit a license, vending machine disc, or marker is guilty of a felony punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both. A person who alters or falsifies records or markings required under this act is guilty of a felony punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both.

(8) The attorney general has concurrent power with the prosecuting attorneys of the state to enforce this act.

(9) At the request of the department or its duly authorized agent, the state police and all local police authorities shall enforce the provisions of this act.

**205.429 Seizure and confiscation of contraband; investigation or search of vehicle; inventory statement of seized property; notice; publication; hearing; disposition of forfeited property; appeal; public sale; proceeds credited to general fund; other penalties not relieved; award and payment to person furnishing information; prohibited conduct by retailer; order.**

Sec. 9. (1) A tobacco product held, owned, possessed, transported, or in control of a person in violation of this act, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of this act and any related books and

records are contraband and may be seized and confiscated by the department as provided in this section.

(2) If an authorized inspector of the department or a police officer has reasonable cause to believe and does believe that a tobacco product is being acquired, possessed, transported, kept, sold, or offered for sale in violation of this act for which the penalty is a felony, the inspector or police officer may investigate or search the vehicle of transportation in which the tobacco product is believed to be located. If a tobacco product is found in a vehicle searched under this subsection or in a place of business inspected under this act, the tobacco product, vending machine, vehicle, other than a vehicle owned or operated by a transportation company otherwise transporting tobacco products in compliance with this act, or other tangible personal property containing those tobacco products and any books and records in possession of the person in control or possession of the tobacco product may be seized by the inspector or police officer and are subject to forfeiture as contraband as provided in this section.

(3) As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the property seized. A copy of the inventory statement shall also be filed with the state treasurer. The inventory statement shall also contain a notice to the effect that unless demand for hearing as provided in this section is made within 10 business days, the designated property is forfeited to the state. If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this subsection, to be published at least 3 times in a newspaper of general circulation in the county where the seizure was made. Within 10 business days after the date of service of the inventory statement, or in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the state treasurer a demand for a hearing before the state treasurer or a person designated by the state treasurer for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the original request for hearing by registered mail or personal service. The person or persons are entitled to appear before the department, to be represented by counsel, and to present testimony and argument. Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the department shall render its decision in writing within 10 business days of the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession. If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the state treasurer a demand for a hearing before the department, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section. If, after a hearing before the state treasurer or person designated by the state treasurer, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(4) If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action shall be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. The court shall hear the action and determine the issues of fact and law involved in accordance with rules of practice and procedure as in other in rem proceedings. If a judicial determination of the lawfulness of the seizure and forfeiture cannot be made before deterioration of any of the property seized, the court shall order the destruction or sale of the property with public notice as determined by the court and require the proceeds to be deposited with the court until the lawfulness of the seizure and forfeiture is finally adjudicated.

(5) The department shall destroy all cigarettes forfeited to this state. The department may sell all tobacco products, except cigarettes, and other property forfeited pursuant to this section at public sale. Public notice of the sale shall be given at least 5 days before the day of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department shall be credited to the general fund of the state.

(6) The seizure and destruction or sale of a tobacco product or other property under this section does not relieve a person from a fine, imprisonment, or other penalty for violation of this act.

(7) A person who is not an employee or officer of this state or a political subdivision of this state who furnishes to the department or to any law enforcement agency original information concerning a violation of this act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded and paid by the state treasurer, compensation of not more than 10% of the net amount received from the sale of any forfeited cigarettes or other property, but not to exceed \$5,000.00 which shall be paid out of the receipts from the sale of the property. If any amount is issued to the local governmental unit under subsection (5), the amount awarded under this subsection to a person who provides original information that results in a seizure of cigarettes or other property by a local law enforcement agency shall be paid from that amount issued under subsection (5). If in the opinion of the attorney general and the director of the department of state police it is deemed necessary to preserve the identity of the person furnishing the information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit setting forth that necessity and a warrant may be issued jointly to the attorney general and the director of the department of state police. Upon payment to the person furnishing that information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit that the money has been by them paid to the person entitled to the money under this section.

(8) Beginning September 1, 1998, if a retailer possesses or sells cigarettes on which the tax imposed under this act has not been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act, the retailer shall be prohibited from purchasing, possessing, or selling any cigarettes or other tobacco products as follows:

(a) For a first violation, for a period of not more than 6 months.

(b) For a second violation within a period of 5 years, for a period of at least 6 months and not more than 36 months.

(c) For a third or subsequent violation within a period of 5 years, for a period of at least 1 year and not more than 5 years.

(9) The prohibition described in subsection (8) shall be effective upon service by certified mail or personal service on the retailer of notice issued by the department



ordering the retailer to cease all sales and purchases of cigarettes and other tobacco products. Upon receipt of this notice, the retailer may return any tobacco products in the possession of the retailer upon which the tax imposed by this act has been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act. The department shall notify all licensed wholesalers, manufacturers, secondary wholesalers, vending machine operators, and unclassified acquirers of any retailer who has been prohibited from purchasing cigarettes or other tobacco products and the duration of the prohibition. A wholesaler, secondary wholesaler, or unclassified acquirer shall not sell cigarettes or other tobacco products to a retailer after receipt of notice from the department that the retailer is prohibited from purchasing tobacco products. Any cigarettes or other tobacco products found on the premises of the retailer during the period of prohibition shall be considered contraband and subject to seizure under this section, and shall constitute an additional improper possession under this subsection. The retailer may contest the order prohibiting purchase, possession, or sale of tobacco products in accordance with the appeal procedures and time limits provided in subsection (3) of this section. After completion of the appeals provided or upon expiration of the period to request such appeal, the department shall issue a final order and make service upon the retailer of an order to cease all purchases, possession, and sale of all cigarettes and other tobacco products for a specified period as appropriate. This order does not relieve the retailer from seizure and sale of a tobacco product or other property under this section, or relieve the retailer from a fine, imprisonment, or other penalty for violation of this act.

**205.431 Sale or solicitation of orders to be shipped, mailed, sent, or brought into state; license required; separate offenses; sales conducted through internet, by telephone, or mail-order transaction; definitions.**

Sec. 11. (1) A person, either as principal or agent, shall not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise sent or brought into the state, to a person not a licensed manufacturer, licensed wholesaler, licensed secondary wholesaler, licensed vending machine operator, licensed unclassified acquirer, licensed transporter, or licensed transportation company, unless the tobacco product is to be sold to or through a licensed wholesaler.

(2) All sales conducted through the internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of cigarettes is made, whether through the mail, through a transportation company, or through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. The statement shall also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.