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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 470**

125th General Assembly  
(As Introduced)

**Reps. G. Smith, Webster, D. Evans, Allen, Grendell, McGregor, Wolpert,  
Peterson, Kearns, Flowers**

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### **BILL SUMMARY**

- Adds credit unions, or a type of credit union, to laws applicable to certain types of financial institutions, which laws relate to the eligibility and authority of public depositories, the regulation of transactions under the Retail Installment Sales Act (RISA) and the Consumer Sales Practices Act (CSPA), probate-related issues, the maintenance of interest-bearing trust accounts (IOLTAs) for attorneys, and the designation of on-premises police officers.
- Modifies the Credit Union Law to expand the powers of credit unions, including increasing general powers and services that may be offered, providing authority to indemnify persons involved in litigious matters on behalf of the credit union that is similar to authority provided other business entities, providing full and limited trust powers similar to Ohio savings and loan associations, and increasing lending authority and parity with powers and benefits possessed by other described financial institutions.
- Expands membership criteria for credit unions and makes changes in the regulation of member and nonmember accounts at credit unions.
- Modifies the Credit Union Law relating to the regulation of the operations of a credit union, including director meetings, amending articles, and compensation; liquidity funds and liquidations; permissible investments; recordkeeping; use of trade names; and authority of out-of-state credit unions.

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## TABLE OF CONTENTS

Overview.....	2
<b>MODIFICATION OF OTHER LAWS</b>	
Addition of credit unions as public depositories .....	3
The RISA and CSPA.....	4
Modifications in probate-related laws .....	4
IOLTA modifications .....	5
Designation of on-premises police officers.....	5
<b>CREDIT UNION LAW MODIFICATIONS</b>	
Powers of a credit union.....	5
Expanded general powers and services offered.....	5
Indemnification authority .....	6
Trust powers.....	7
Lending authority and loans .....	8
Parity authority .....	8
Membership and accounts of a credit union .....	8
Operations of a credit union.....	9
Director meetings; amending articles; and compensation .....	9
Liquidity funds and liquidations .....	9
Permissible investments .....	10
Recordkeeping; confidentiality.....	10
Use of trade names .....	10
Authority of out-of-state credit unions .....	11
Definitions .....	11

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## CONTENT AND OPERATION

### Overview

The bill makes numerous changes in the Credit Union Law (Chapter 1733.) and modifies other laws applicable to certain other types of financial institutions by expressly adding credit unions (see **COMMENT** below), or a type of credit union, as a financial institution for purposes of these laws.

The analysis first discusses proposed modifications in laws other than the Credit Union Law. These laws relate to:

- (1) The eligibility to become and the authority of public depositories;

(2) Regulation under the Retail Installment Sales Act (RISA) and the Consumer Sales Practices Act (CSPA), both of which relate generally to transactions with consumers;

(3) Probate issues;

(4) The maintenance of interest-bearing trust accounts (IOLTAs) for attorneys; and

(5) The designation of on-premises police officers.

Proposed changes to the Credit Union Law relating to the operations of Ohio-chartered credit unions are discussed next. These proposed changes concern the following:

(1) Expansion of the powers of credit unions, including increasing general powers and services that may be offered, providing authority to indemnify persons involved in litigious matters on behalf of the credit union, providing trust powers, and increasing lending authority and parity with powers and benefits possessed by other described financial institutions;

(2) Membership criteria of credit unions and the regulation of member and nonmember accounts;

(3) Operations of a credit union, including (a) director meetings, amending articles, and compensation, (b) liquidity funds and liquidations, (c) permissible investments, (d) recordkeeping, (e) use of trade names, and (f) authority of out-of-state credit unions.

## **MODIFICATION OF OTHER LAWS**

### **Addition of credit unions as public depositories**

Existing law (R.C. Chapter 135.) authorizes the state and political subdivisions to deposit public moneys of the state or political subdivisions in various types of qualified financial institutions subject to certain requirements, including limitations on the total amount (30% of total assets) that any one such financial institution may hold. Currently, these financial institutions are national banks and various savings and loan associations and savings banks. The public moneys, generally, may be classified as "active," "interim," or "inactive" deposits. The bill makes the following changes and additions to this law:

Adds that, subject to similar restrictions in continuing law applicable to public depositories, described federal or state credit unions are eligible to be public depositories of active, inactive, or interim public moneys of the state, a

county, or a political subdivision and modifies the application requirements to be a public depository for inactive or interim moneys to include applications made by credit unions. (R.C. 135.03, 135.06, 135.08, and 135.32.)

Includes credit unions regulated by the Superintendent of Financial Institutions or the National Credit Union Administration as eligible to make authorized investments of interim moneys of political subdivisions and of inactive moneys of counties. (R.C. 135.14 and 135.35.)

Allows a credit union, approved by the Superintendent of Financial Institutions as having trust authority and adequate safekeeping devices, to act as a trustee for the safekeeping of investments pledged as security for public moneys of a county. (R.C. 135.37.)

Includes credit unions acting as public depositories in provisions relating to the issuance of bonds in anticipation of the collection of principal and interest on securities pledged as collateral by a defaulting public depository and in provisions relating to the retirement of these bonds. (R.C. 135.52 and 135.53.)

### **The RISA and CSPA**

Similar to current law exempting transactions of other financial institutions, the bill exempts transactions between credit unions and their members or customers from application of the Retail Installment Sales Act (RISA), which Act applies to consumer retail installment sales transactions. (Generally, a consumer retail installment sales transaction is a retail sale between a seller and consumer in which the consumer agrees to pay the cash price of the item purchased in installments over time.) The bill also declares that a consumer retail installment sales transaction using a credit card issued by a credit union does not make the credit union, thereby, a creditor subject to the RISA. (R.C. 1317.01.)

The bill also exempts transactions between credit unions and their members or customers from the provisions of the Consumer Sales Practices Act (CSPA) prohibiting deceptive or unreasonable acts in certain consumer transactions. (Again, this exemption is similar to the existing exemption of transactions with other financial institutions.) (R.C. 1345.01.)

### **Modifications in probate-related laws**

The bill makes a number of changes or additions to probate-related statutes, to add credit unions as eligible financial institutions, as follows:

Authorizes a state or federal credit union to receive deposits of prepaid and unearned costs assessed by probate courts in probate-related matters. (R.C. 2101.161.)

Includes certain accounts held at credit unions as distributable property for purposes of the Uniform Simultaneous Death Act. (O.R.C. 2105.31 to 2105.39.)

Includes a state or federal credit union as eligible to receive deposits of personal property, which deposits are subject to specified requirements and must be made by a fiduciary when ordered by a probate court in connection with certain small estates. (R.C. 2109.13.)

Allows a fiduciary, that is investing a short term trust-quality investment fund in connection with a described estate, to invest in deposits in insured credit unions and authorizes the fiduciary to make temporary investments in deposits at insured credit unions, provided in both cases, that the deposits pay comparable interest. (R.C. 2109.372.)

Includes a credit union located in Ohio as eligible to receive deposits of funds awaiting proper disbursement by a fiduciary in connection with described estates. (R.C. 2109.41.)

### **IOLTA modifications**

In addition to other financial institutions under current law, the bill includes a credit union insured by a credit union share guaranty corporation established under Ohio law as eligible to maintain, for an attorney or group of attorneys, interest-bearing trust accounts (IOLTAs) of client moneys. (R.C. 4705.09.)

### **Designation of on-premises police officers**

The bill permits a credit union to apply to the Secretary of State to appoint designees to be police officers acting for or on the premises of the credit union. (R.C. 4973.17.)

## **CREDIT UNION LAW MODIFICATIONS**

### **Powers of a credit union**

#### **Expanded general powers and services offered**

The bill expands the general powers of credit unions to permit the following:

(1) The charging of annual membership or entrance fees, in any amount instead of a one-time fee that may not exceed \$1 as currently is allowed;

(2) The making of "reasonable" contributions to nonprofit-related organizations;



- (3) Engaging in activities requested by governmental units;
- (4) Receiving moneys for credit unions servicing predominantly low-income members;
- (5) Acting as an insurance agent;
- (6) Offering services to other financial institutions;
- (7) Issuing subordinated certificates of indebtedness to members;
- (8) Entering into debt cancellation and debt suspension contracts with borrowers;
- (9) Exercising other powers authorized by the Superintendent of Financial Institutions;
- (10) Acquiring and leasing real estate;
- (11) Establishing credit unions within public schools;
- (12) Guaranteeing member signatures;
- (13) Performing specified nonmember services;
- (14) Performing services for persons in underserved areas or persons not having a relationship with a financial institution. (R.C. 1733.04.)

**Indemnification authority**

Similar to laws relating to corporations and other business entities, the bill authorizes a credit union to indemnify or agree to indemnify any individual, including an individual (provided that the individual was acting lawfully and in good faith for the best interest of the credit union) that (1) was or is a party, or threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, or (2) was or is a party, or threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the credit union to procure judgment in its favor, because the individual was authorized to act in a described capacity on behalf of the credit union, and including an individual that was successful in defending such an action, suit, or proceeding. The bill also specifies expenses, including attorney's fees, that may be indemnified and establishes or identifies criteria, requirements, and procedures for a credit union making an indemnification. It makes declarations about indemnification entitlement and authorizes a credit union to purchase and maintain insurance or similar protection

on behalf of officials and other individuals serving at the request of a credit union. (R.C. 1733.043.)

### **Trust powers**

Similar to law regulating Ohio savings and loan associations, the bill authorizes credit unions to exercise full or limited trust powers. A credit union may not exercise trust powers without first filing an application with the Superintendent of Financial Institutions. Upon consideration of information required by the bill to be included in the application and any other facts or circumstances determined proper, the Superintendent may grant limited or full trust powers as the Superintendent considers warranted and on the conditions that the Superintendent considers advisable.

The bill specifies that where two or more credit unions consolidate or merge, and any one of the credit unions, prior to the transaction, has been granted authority from the Superintendent to exercise trust powers, which authority exists at the time of the transaction, the authority to exercise trust powers passes to the resulting credit union. (The resulting credit union could exercise trust powers in the same manner and to the same extent as the credit union to which the authority originally was granted.) A new application would not be necessary to exercise these trust powers. If, however, the name of the resulting credit union differs from that of the credit union to which the right to exercise trust powers originally was granted, the Superintendent must issue a certificate in the name of the resulting credit union showing its right to exercise the trust powers granted previously to any of the credit unions involved in the merger or consolidation.

Other provisions of the bill regarding trust powers of credit unions relate to the following topics: security deposits with the state treasury and bonding requirements of certain persons, administration of trust powers, maintenance of books and accounts, audit of a trust department, deposit of funds awaiting investment or distribution, investment of funds held as fiduciary, limits on self-dealing, custody of investments, compensation of a credit union, collective investment, surrender of trust powers, actions upon appointment of a liquidating agent by the Superintendent, and revocation of trust powers by the Superintendent. (R.C. 1733.044.)

Also similar to "limited" trust power authority granted Ohio savings and loan associations, the bill authorizes credit unions to serve as custodians for any fund qualifying as an "individualized retirement account" under the federal Internal Revenue Code. And, with respect to trusts qualifying under this or other federal tax law as a pension, profit-sharing, or stock bonus plan, a credit union may serve as a trustee of the trust. A credit union may invest funds of these trusts either in savings accounts or deposits of a credit union or in equity or debt

securities issued by a credit union. In addition, specifications are made in the bill about payments from a trust in the event of the death of the trustee and about the relationship of a declaration of trust to the Statute of Frauds Law. The bill further allows a credit union, as long as it keeps separate records for each trust account, to commingle in one or more accounts, any funds held in trust (including funds received as a result of the bill's grant of authority to a credit union to serve as a trustee for federally qualifying trusts discussed in this paragraph). This limited trust power granted to a credit union is subject to regulation solely by the Superintendent of Financial Institutions. (R.C. 1733.045.)

Related to trust powers authorized by the Credit Union Law, the bill modifies the Fiduciary Law to recognize succession of fiduciary status if credit unions having trust powers merge or consolidate. (R.C. 2109.28.)

### **Lending authority and loans**

The bill expands the lending authority of credit unions by (1) authorizing loans and *other extensions of credit* to members and account holders eligible for membership in a credit union, (2) authorizing a credit union to make extensions of credit to other credit unions, (3) eliminating the restriction on the total amount of loans a credit union may make, (4) permitting credit unions to make small loans for 30 days or less provided other requirements are satisfied, (5) specifying that a credit union has a lien on certain accounts of a member for any obligation owed the credit union, and (6) permitting a credit union to restrict withdrawals from accounts by members with outstanding obligations to the credit union. (R.C. 1733.25.)

### **Parity authority**

The bill expands the authority of credit unions doing business under authority granted by the Superintendent of Financial Institutions, subject to administrative rules of the Superintendent (which rules the bill specifies *are* subject to the provisions of the Administrative Procedure Act (Chapter 119.) generally relating to notice and opportunity for a hearing), (1) to possess any right, power, privilege, or benefit that is possessed, by statute, rule, policy, regulation, interpretation, or judicial decision, by any credit union or other financial institution operating in Ohio and organized under Ohio laws, another state's laws, or the United States' laws, and (2) to permit a credit union to utilize other forms of secondary capital, besides capital stock, that are permitted by federal regulatory authorities to be utilized as secondary capital by federal credit unions. (R.C. 1733.412 and 119.01.)

### **Membership and accounts of a credit union**

The bill expands criteria for membership in a credit union, including that the Superintendent of Financial Institutions may establish criteria for groups or persons to obtain membership in a credit union, but that the only reason a group or otherwise is to be denied membership is *based on the safety and soundness of the credit union*. The bill also modifies authority relating to interstate expansion of a field of membership to specify that *respective state supervisory authorities* must approve the expansion. (R.C. 1733.05.)

The bill also: (1) expands the authority of a credit union to issue share accounts to members and nonmembers for purposes of beneficiaries of trusts and to members and nonmembers acting as fiduciaries in event of a death, (2) modifies duties and makes a declaration relative to share accounts of minors, and (3) authorizes a credit union to receive nonmember deposits in accordance with rules of the Superintendent. (R.C. 1733.24.)

### **Operations of a credit union**

#### **Director meetings; amending articles; and compensation**

Unless the credit union's articles, regulations, or bylaws prohibit or certain other provisions apply, the bill (1) authorizes directors' meetings to be held by communication equipment, provided additional requirements are met, (2) specifies the means of notice of directors' meetings to be given at least two days before a meeting and adds that meetings may be called by vicechairpersons, and (3) specifies that the notice of a directors' meeting need not specify its purpose and no notice of adjournment of a meeting need be given if certain requirements are met. (R.C. 1733.16.)

The bill authorizes the board of directors to adopt amendments to the articles of a credit union changing the credit union's name, changing the location in Ohio of its principal office, and making described changes relating to the shares of a credit union. (R.C. 1733.33.)

In addition, the bill: (1) eliminates the restriction on an officer, director, or employee of a credit union receiving described compensation for "association with [a] credit union" and permits this compensation to be given if the Superintendent of Financial Institutions adopts rules allowing it, (2) permits a credit union to purchase insurance on behalf of certain persons acting or serving in a described manner for the credit union, subject to rules of the Superintendent, and (3) provides that in addition to being authorized by the articles, compensation for directors or members of committees for serving as such must be approved by rule of the Superintendent. (R.C. 1733.22.)

### **Liquidity funds and liquidations**

The bill eliminates the requirement that a credit union maintain a liquidity fund in a specified amount and instead permits the Superintendent of Financial Institutions, by rule, to require a credit union to establish a liquidity fund. (R.C. 1733.31.)

It also eliminates the "date of suspension" as a date that member shares of a credit union may be valued when distributing assets to the members of a liquidating credit union. (R.C. 1733.37.)

### **Permissible investments**

The bill adds that a credit union may invest funds not needed for loans in (1) accounts, deposits, or shares of, credit unions doing business in Ohio, (2) insured credit unions doing business outside Ohio, and (3) credit union service corporations. It also specifies that a credit union may make investments authorized by rule of the Superintendent of Financial Institutions.

In addition, the bill expressly authorizes loans made by or to individual members of a credit union to be purchased by another credit union, in accordance with rules and the approval of the Superintendent, and permits a credit union to purchase assets of another credit union or sell its assets to another credit union. (R.C. 1733.30.)

### **Recordkeeping; confidentiality**

The bill requires a credit union in maintaining records of its business and transactions to *maintain the authorized processes for recording or storing documents or instruments* in accordance with the rules of the Superintendent of Financial Institutions.

It also allows a credit union to keep documents in electronic form and makes declarations about electronic records and authorizes the use of electronic signatures, including defining and providing for the use of digital signatures by a credit union. (R.C. 1733.29.)

The bill adds that confidentiality provisions prohibiting disclosure by the Superintendent of information in certain financial reports that are filed with the Superintendent do *not* apply to prevent disclosure by the Superintendent of information in these reports to share guarantee insurance organizations, to federal or state agencies, or to the general public and specifies that certain financial reports, annual financial reports, call reports, and financial statements of credit unions are public records. (R.C. 1733.32.)

### Use of trade names

The bill provides conditions under which a credit union may adopt or change one or more trade names, including obtaining approval of the Superintendent of Financial Institutions and meeting disclosure requirements, and prohibiting a trade name including the phrase "credit union." (R.C. 1733.44.)

### Authority of out-of-state credit unions

The bill adds as one criteria for authorizing an out-of-state credit union to do business in Ohio, that an Ohio credit union be authorized to do business in the same state *or territory* as the out-of-state credit union seeking to do business in Ohio. (R.C. 1733.38.)

### Definitions

For purposes of the Credit Union Law, the bill specifies that a credit union also may be a low-income credit union and that ownership of an account does not confer membership or voting rights to be a "voting member." The bill also adds new definitions for "net worth," "deposits," "membership agreement," and "shares." (R.C. 1733.01.)

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## COMMENT

Generally, credit unions are nonprofit financial institutions whose customers (members) qualify for membership in a number of ways, for example, they reside in a common geographic area or are employed by the same employer. In addition, in order to do business with a credit union, a member must purchase one share of the credit union, which share gives the member an equal vote with other members in determining a credit union's board of directors. Credit unions may be Ohio-chartered (pursuant to Chapter 1733.) or federal-chartered and may be insured through the National Credit Union Administration or by a credit union share guaranty corporation established and operating under Chapter 1761.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-21-04	p. 1769

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