



Sub. H.B. 81*

126th General Assembly

(As Reported by S. Finance & Financial Institutions)

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BILL SUMMARY

- Makes numerous revisions to the Credit Unions Law, including with respect to general powers and services offered; lending authority; member accounts; meetings of the board of directors; compensation; liquidity funds and liquidation; investments; record keeping; confidentiality; use of trade names; and out-of-state credit unions.
- Modifies the existing Department of Commerce parity rule authority for banks, savings and loan associations, savings banks, and credit unions.
- Exempts transactions between credit unions and their customers from regulation under the Retail Installment Sales Act and the Consumer Sales Practices Act.
- Modifies probate and fiduciary laws and the laws dealing with IOLTAs and on-premises police officers to include credit unions and savings banks as eligible financial institutions for various purposes, and provides additional qualifications for on-premises police officers at any financial institution.

** This analysis was prepared before the report of the Senate Finance & Financial Institutions Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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CONTENT AND OPERATION

Overview

The bill makes numerous revisions to the Credit Unions Law (R.C. Chapter 1733.), including with respect to the powers of, and services offered by, credit unions (see **COMMENT** below); the regulation of member accounts; general operations of a credit union; and out-of-state credit unions. It revises the existing parity rule authority for banks, savings and loan associations, and savings banks to conform more closely to the parity rule authority being proposed for credit unions. And it modifies other areas of law to (1) exempt transactions between credit unions and their customers from regulation under the Retail Installment Sales Act and the Consumer Sales Practices Act, (2) include credit unions and savings banks as eligible financial institutions for various purposes, and (3) provide additional qualifications for on-premises police officers at any financial institution.

Powers of a credit union

General powers and services offered

(R.C. 1733.04(A), (C), and (D))

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

(1) Making reasonable contributions to any nonprofit civic, charitable, or service organizations;

(2) For a reasonable fee, providing trustee or custodial services authorized under any written trust instrument or custodial agreement (a) created or organized in the United States and (b) forming part of certain tax-advantaged savings plans described in the Internal Revenue Code, provided that the funds of the plans are invested in share accounts or share certificate accounts of the credit union. Examples of these services include acting as a trustee or custodian for member retirement, education, or health savings accounts.

(3) Opening and maintaining a student branch in an elementary or secondary school, with the permission of the Superintendent of Financial Institutions and upon agreement with the school board, in the case of a public school, or governing authority, in the case of a nonpublic school. The term "**student branch**" is the designation given to the credit union for the in-school services and financial education offered to students.

A student branch is for the express use of students. A student's membership expires upon the student's graduation from secondary school. Any student enrolled in a school with a student branch who is not otherwise qualified for membership in the credit union maintaining the student branch is qualified to be a member of that student branch. Faculty, staff, or lineal ancestors or descendants of students may *not* use a student branch and are *not* eligible for membership in the credit union maintaining the student branch unless otherwise qualified by law to be members.

The bill authorizes the Superintendent to adopt rules appropriate to the formation and operation of student branches.

(4) Guaranteeing 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.

Real property acquisitions

(R.C. 1733.04(B))

Under existing law, credit unions may lease or purchase real estate but only to the extent it is necessary for its immediate use or for its future operation. The purchase of such real estate must first be approved by the Superintendent. The bill gives the Superintendent no more than 30 days after receiving notice of the proposed purchase to either deny, approve, or modify the acquisition, and if the Superintendent fails to respond, the acquisition is deemed approved. It also permits a credit union to lease space in any real estate it acquires, in accordance with rules adopted by the Superintendent.

Lending authority

(R.C. 1733.25 and 1733.251)

Loans. Existing law permits credit unions, under certain circumstances, to make loans to members and to other credit unions. Under the bill, credit unions also are authorized to make *other extensions of credit* to those parties and under those circumstances.

Additionally, the bill permits a credit union to enter into a loan agreement with a member under the following conditions, despite any other limitation in the Credit Union Law or the Usury Law (R.C. Chapter 1343.):

- (1) The loan is for less than \$1,000 and for not more than 30 days.
- (2) A fee may be charged in addition to any interest authorized by law in connection with the loan, which fee is not to be included in the computation of interest for any provision of the Revised Code that regulates interest charged or received in connection with a transaction.
- (3) The total interest, fees, and other costs of the loan does not exceed 10% of the principal amount.
- (4) The member does not have more than one of these loans outstanding at any one time with the credit union.
- (5) The loan is not being made to a member for purposes of retiring an existing loan between the credit union and the member, which existing loan is one of these loans.

Interest. Under continuing law, a credit union may contract for and receive interest at any rate or rates agreed upon or consented to by the parties to the loan

contract, but not exceeding an annual percentage rate of 25%. The bill adds that the computation of the loan or other extension of credit balance on which interest is assessed and the method of compounding interest on the balance is to be as agreed upon by the credit union and the member.

Liens. Under current law, total loans to association members cannot exceed 10% of the shares and undivided earnings or the total value of shares pledged by those members as security for loans, whichever is greater.¹ The bill eliminates this restriction and, instead, requires a credit union to have a lien on the membership share, shares, deposits, and accumulated dividends and interest of a member in an individual, joint, trust, or payable on death account for (a) any obligation owed to the credit union by that member or (b) any loan co-signed or guaranteed by the member or account holder. A lien cannot, however, be placed upon the funds in an individual retirement account or an account established pursuant to the Internal Revenue Code.

The bill also provides that a credit union may refuse to allow withdrawals from any share or deposit account by a member while the member has any outstanding obligation to the credit union.

Parity rule authority

(R.C. 119.01 and 1733.412)

Under existing law, if federal credit unions (organized under the laws of the United States) with home offices in Ohio possess a right, power, or benefit by virtue of statute, rule, regulation, or judicial decision, or will possess a right, power, or benefit by virtue of a rule or regulation issued but not yet effective, and that right, power, or benefit is *not* possessed by credit unions organized under Ohio law, the Superintendent may, by rule adopted in accordance with R.C. 111.15 (the abbreviated rule-making procedure), authorize credit unions organized under Ohio law to exercise that right, power, or benefit.² Any such parity rule becomes effective on the date of its issuance, unless the rule is issued in anticipation of a federal rule or regulation that has been issued but has not yet become effective. In that case, the effective date of the Superintendent's rule is the date on which the federal rule or regulation becomes effective. The Superintendent may revoke a parity rule upon 30 days' written notice to state-

¹ "Association member" is defined under current law as any member of a credit union other than an individual member or a credit union (R.C. 1733.01(E)).

² Current law exempts these parity rules from the general requirement that rules adopted under R.C. 111.15 be filed with the Joint Committee on Agency Rule Review (R.C. 111.15(D)(2)).

chartered credit unions. If a parity rule adopted by the Superintendent is not enacted into law within 30 months from the date of its issuance, the rule is no longer of any effect.

The bill significantly modifies this parity rule authority. Under the bill, if any credit union operating in Ohio that is organized or chartered under Ohio or federal law possesses a right, power, privilege, or benefit "by virtue of statute, rule, *policy*, regulation, *interpretation*, or judicial decision," the Superintendent must adopt a rule under R.C. 111.15 granting any credit union "doing business under the authority granted by the Superintendent," the authority to exercise the respective right, power, privilege, or benefit. The rule becomes effective on the date the Superintendent issues the rule, or the date the statute, rule, policy, regulation, interpretation, or judicial decision on which the Superintendent's rule is based becomes effective, whichever is later.

If the rule adopted by the Superintendent is not enacted into law *or adopted pursuant to the Administrative Procedure Act* (R.C. Chapter 119., which requires public notice and a public hearing) within 30 months from its effective date, it no longer is of any effect. The Superintendent may, however, adopt the rule for a second 30-month period under R.C. 111.15.

Under current law, actions taken by the Superintendent under this parity-rule authority are exempt from the requirements of the Administrative Procedure Act. In light of the changes described above, the bill removes this exemption.

(For a discussion of the changes made by the bill to the parity rule authority for banks, savings banks, and savings and loan associations, see "**Modification of other laws; Parity rule authority for other financial institutions**," below.)

Shares and share accounts; minors

(R.C. 1733.24)

Existing law authorizes a credit union to receive funds for deposit in share accounts, share draft accounts, and share certificates from its members, from other credit unions, and from officers of governmental entities. A "share account" is an account established for a member for which no share certificates are issued but which are included in the registry of shares. Subscription to or purchase of a share of a credit union is a prerequisite for membership in the credit union. These shares are referred to as "membership shares."

The bill does the following:

--Specifies that, if two or more persons eligible for membership have jointly subscribed for one or more shares under a joint account, each may be admitted to membership.

--Allows shares or share accounts to be issued in the name of a fiduciary or custodian in trust for a member beneficiary or in trust upon the death of a member.

Minors currently are permitted to purchase shares and share accounts, but do not qualify as voting members. In all other matters regarding shares and share accounts, a credit union may deal with a minor as if the minor were of legal age. Under the bill, minors may also purchase other depository instruments. The bill provides that, if shares, share accounts, or other depository instruments are issued in the name of a minor, redemption of any part or all of the shares or withdrawal of funds by payment to the minor of the shares or funds and any declared dividends or interest releases the credit union from all obligation to the minor as to the shares reduced or funds withdrawn.

Operations of a credit union

Meetings of the directors

(R.C. 1733.16)

Currently, meetings of the board of directors of a credit union may be called by the chairperson, the president, any vice-president, or any two directors. The bill also permits the vice-chairperson to call meetings, and clarifies that the reference to "any vice-president" means any vice-president *of the board*.

The bill permits meetings of the directors to be held through any communication equipment *if* all the persons participating can hear each other and the articles or regulations of the credit union do not prohibit such meetings. Participation in a meeting through communication equipment constitutes presence at the meeting.

Existing law requires that notice of each meeting be given to each director at the time and in the manner specified in the regulations or bylaws. The bill adds that, *if not otherwise specified in the regulations or bylaws*, notice is to be given by personal delivery or by mail, telegram, cablegram, overnight delivery service, or any other means of communication authorized by the director, at least two days before the meeting. The notice of a meeting need not specify the meeting's purpose. In addition, notice of adjournment of a meeting need not be given, if the time and place to which it is adjourned are fixed and announced at the meeting.

Amendment of articles by the directors

(R.C. 1733.33)

The board of directors currently is authorized to adopt amendments to the field of membership article of the credit union's articles of incorporation. Under the bill, the board also may adopt the following amendments to the articles: (1) unless otherwise provided in the articles, an amendment changing the name of the corporation, (2) an amendment changing the place in Ohio where the principal office of the credit union is located, and (3) an amendment changing (a) the authorized number of shares, (b) the express terms, if any, of the shares, and (c) if the shares are classified, the designation of each class, their express terms, and par value, if any, per share.

Compensation

(R.C. 1733.22)

Current law prohibits a director or committee member from receiving any compensation for the individual's services, but states that they are entitled to reimbursement for expenses incurred in connection with the business of the credit union, if authorized by the board of directors and not prohibited by the articles or regulations. An exception under the bill permits directors and committee members to receive reasonable health, accident, and related types of personal insurance protection at the expense of the credit union.

Liquidity fund; liquidation

(R.C. 1733.31 and 1733.37)

Each credit union currently is required to maintain a liquidity fund equal to 5% of its shares, but the Superintendent may require a particular credit union or all credit unions to establish a liquidity fund in excess of that amount if economic conditions or other appropriate circumstances so warrant. The bill instead permits the Superintendent to require the establishment of a liquidity fund *greater than or less than 5%* of the credit union's shares, if such conditions or circumstances warrant.

Existing law sets forth the order in which the expenses and other liabilities of a credit union are to be paid in the course of liquidation of the credit union. Generally, the assets are first used to pay the expenses incidental to liquidation, then any liability due nonmembers, and then redemption of shares and share accounts. Any assets remaining are distributed to the members proportionately to the purchase price of shares held by each member as of the date dissolving was

voted *or* the date of suspension, as the case may be. The bill eliminates "the date of suspension" as a potential reference date for purposes of this provision.

Investments

(R.C. 1733.30)

The bill authorizes credit unions to make additional types of investments. Under the bill, funds not required for the purpose of loans may also be invested in state or federally chartered credit unions doing business in Ohio; in accounts, deposits, or shares of insured credit unions doing business outside Ohio; and in shares, stocks, or obligations of any other organization providing services that are associated with the routine operations of credit unions.

The bill also permits credit unions to purchase loans made to individual members of another credit union, subject to the approval of the Superintendent.

Record keeping

(R.C. 1733.29)

Current law specifies the records that must be kept and maintained by credit unions. The bill requires that credit unions also "maintain the authorized processes for recording or storing documents or instruments," as may be required by the Superintendent by rule.

The bill permits credit unions to keep documents in *electronic form* if, in the regular course of business, a credit union possesses, records, or generates any document, representation, image, reproduction, or combination thereof, of any agreement, transaction, act, occurrence, or event. In that case, the recording, comprising, or reproduction is to have the same force and effect as one comprised, recorded, or created on paper or other tangible form by writing, typing, printing, or similar means.

The bill also permits a credit union to make use of digital signatures in any communication, acknowledgment, agreement, or contract between the credit union and its member or any other person. It authorizes any party to the communication, acknowledgment, agreement, or contract to affix a signature by use of a digital signature. "**Digital signature**" is defined as an encrypted electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. Under the bill, a digital signature, when lawfully used by the person whose signature it purports to be, is to have the same force and effect as the use of a manual signature if it is (1) unique to the person using it, (2) capable of verification, (3) under the sole control of the person using it, and (4) linked to data in such a manner that if the data are changed, the digital

signature is invalidated. The bill does not, however, require any credit union to use or permit the use of a digital signature.

The bill states that recordings, copies, photographic images, or stored representations of original documents made in accordance with the bill, or reproductions of original documents produced from such recordings, copies, photographic images, or stored representations, when properly identified by the officer by whom or under whose supervision they were made or who has custody of them, have the same effect at law as the original records or records made by any other legally authorized means. They may be offered in the same manner and are to be received in evidence in any court where the original records, or records made by other legally authorized means, could have been introduced and received. Certified or authenticated duplicates of recordings, copies, photographic images, or stored representations of original documents made in accordance with the bill, or of reproductions of original documents produced from recordings, copies, photographic images, or stored representations made in accordance with the bill, are to be admitted in evidence in the same manner as the original documents.

Confidentiality; public records

(R.C. 1733.32)

Current law states that information obtained by the Superintendent of Financial Institutions as a result of the examination or independent audit of a credit union or from required reports is confidential, except under certain circumstances. The bill provides additional exceptions. It permits the Superintendent to disclose information contained in a credit union's annual financial report, or the financial report prepared by a credit union whenever requested to do so by the Superintendent, to (1) share guarantee insurance organizations, (2) federal or state agencies, or (3) the general public. Additionally, the bill states that these financial reports, call reports, and financial statements required to be filed with the Division of Financial Institutions are public records, but information relating to the examination or independent audit of a credit union (other than the items permitted to be disclosed or identified as being public records) is not a public record.

Use of trade names

(R.C. 1733.44)

The bill authorizes a credit union to adopt one or more trade names if the credit union gives written notice of the proposed trade name to the Superintendent of Credit Unions at least 30 days prior to using it. The Superintendent may deny a credit union the right to use a given trade name, or terminate a credit union's right

to use a trade name, for any reason. A credit union may use a trade name or a name other than its official charter name in advertising, but must use its official charter name (1) in communications with the Division of Financial Institutions and (2) in all share certificates or certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other legal documents.

The bill also requires that the trade name be registered with the Secretary of State in compliance with Ohio laws. The registration must be accompanied by written documentation issued by the Superintendent relating to the right to use, denial to use, or termination of a trade name.

Out-of-state credit unions

(R.C. 1733.38)

Existing law allows credit unions organized under the laws of another state to do business in Ohio if certain conditions are met. Under the bill, this provision applies as well to credit unions organized under the laws of another *territory*.

Modification of other laws

Parity rule authority for other financial institutions

(R.C. 111.15, 119.01, 1121.05, 1155.18, and 1163.22)

Under existing law, the Superintendent of Financial Institutions is also authorized to adopt parity rules for banks, savings banks, and savings and loan associations. These rules are required to be adopted in accordance with R.C. 111.15 (the abbreviated rule-making procedure). The parity rules for banks and savings and loans, however, are exempt from the general requirement that rules adopted under R.C. 111.15 be filed with the Joint Committee on Agency Rule Review. The bill exempts parity rules for *savings banks* from this requirement as well.

Under the bill, the adoption of parity rules is mandatory, rather than discretionary. As with existing law, if the rule adopted by the Superintendent is not enacted into law within 30 months after its effective date, it no longer is of any effect. However, the bill permits the Superintendent to adopt the rule under R.C. 111.15 for a second 30-month period, or to adopt it under the Administrative Procedure Act (R.C. Chapter 119., which requires public notice and a public hearing) to prevent it from losing effect.

Actions taken by the Superintendent under this parity-rule authority currently are exempt from the requirements of the Administrative Procedure Act. In light of the changes described above, the bill removes this exemption.

RISA and CSPA exemptions

(R.C. 1317.01(P) and (Q) and 5725.01; 1345.01(A), not in the bill)

Under current law, transactions between credit unions and their customers are subject to regulation under the Retail Installment Sales Act ("RISA"--R.C. Chapter 1317.) and the Consumer Sales Practices Act ("CSPA"--R.C. 1345.01 to 1345.13).³ The bill exempts those transactions from both acts and, for this purpose, defines "credit unions" as nonprofit cooperative financial institutions organized or chartered under Ohio law, the laws of another state, or federal law. In addition, the bill modifies RISA to exclude credit unions and savings banks from being considered creditors if they merely issue the credit card that is used by a consumer in a particular transaction.

Probate and fiduciary laws

(R.C. 2101.161, 2105.31, 2109.13, 2109.372, and 2109.41)

The bill modifies several probate-related statutes to include credit unions and savings banks as eligible financial institutions, as follows:

--Permits prepaid and unearned costs assessed by probate courts to be deposited in federal credit unions or savings banks or Ohio-chartered credit unions or savings banks;

--Modifies the definition of "co-owners with right of survivorship" for purposes of the Uniform Simultaneous Death Act (R.C. 2105.31 to 2105.39), to expressly include credit union and savings bank accounts that entitle one or more persons to the entire account on the death of the other person or persons;

--Permits the probate court, rather than requiring a bond from a fiduciary, to authorize the deposit of personal property of the estate with a federal credit union or savings bank or Ohio-chartered credit union or savings bank in connection with certain estates;

--Authorizes a fiduciary to make a temporary investment of funds held in liquid form in deposits with insured credit unions or savings banks, if certain conditions are met; and

³ *The Retail Installment Sales Act (RISA) regulates the retail sale of goods made on the basis of installment payments. The Consumer Sales Practices Act (CSPA) prohibits, among other things, specified unfair, deceptive, or unconscionable practices in connection with a consumer transaction.*

--Authorizes a fiduciary, upon appointment and throughout the administration of a trust, to deposit funds received by the fiduciary in a credit union or savings bank located in Ohio.

IOLTAs

(R.C. 4705.09)

The bill permits an attorney or group of attorneys to establish, for purposes of depositing client funds, an interest-bearing trust account (IOLTA) with a credit union insured by a credit union share guaranty corporation established under Ohio law (R.C. Chapter 1761.) or a savings bank authorized to do business in Ohio and insured by the Federal Deposit Insurance Corporation, in addition to other financial institutions specified in current law.

On-premises police officers

(R.C. 109.71, 109.73, 109.79, 4973.17, and 4973.171)

Current law authorizes various financial institutions or associations of such institutions to apply to the Secretary of State for the appointment and commission of persons to act as police officers for and on the premises of the financial institutions. The only specified qualifications for on-premises police officers is that they be Ohio residents of good character.

The bill grants credit unions and savings banks the same authority. In addition, it specifies that to be qualified to be appointed and commissioned by the Secretary of State as an on-premises police officer at *any* financial institution or association of such institutions, a person also must complete a peace officer training program and be certified by the Ohio Peace Officer Training Commission in accordance with current law. The bill also specifically permits persons employed by such financial institutions to attend approved peace officer training programs, including the program operated directly by the Commission on a space-available basis. Such persons also are subject to current law providing for disqualification based on the commission of a felony and for revocation or suspension of an appointment.

COMMENT

Generally, credit unions are nonprofit financial institutions whose customers (members) qualify for membership in a number of ways, such as residing in a common geographic area or being 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. Generally, credit unions may be state-chartered (in Ohio, chartered pursuant to R.C. Chapter 1733.) or federal-chartered and may be insured through the National Credit Union Administration. An Ohio-chartered credit union also may be insured by a credit union share guaranty corporation established and operating under R.C. Chapter 1761.

HISTORY

ACTION	DATE
Introduced	02-23-05
Reported, H. Financial Institutions, Real Estate & Securities	10-13-05
Passed House (91-2)	10-18-05
Reported, S. Finance and Financial Institutions	---

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