



**Sub. S.B. 247**

127th General Assembly  
(As Passed by the General Assembly)

**Sens.** Spada, Grendell, Seitz, Padgett, Schuring, Buehrer, Mumper, Cates, Roberts, Cafaro, Kearney, Morano, Boccieri, Carey, Fedor, Harris, Niehaus, Schaffer, Wagoner, R. Miller, Stivers, D. Miller

**Reps.** Evans, Book, Gibbs, Goyal, Hite, Patton, Sayre, Schindel, S. Williams, Zehringer, Bacon, Batchelder, Bolon, Boyd, Budish, Chandler, Collier, Combs, DeBose, Domenick, Driehaus, Dyer, Flowers, Gardner, Gerberry, J. Hagan, Heard, Hughes, Letson, Lundy, Mallory, J. McGregor, Newcomb, Oelslager, Sears, Setzer, Slesnick, D. Stewart, Webster, B. Williams

**Effective date:** \*

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**ACT SUMMARY**

- Modifies the Credit Union Law with respect to the voting rights of members, boards of directors, record-keeping requirements, methods for preserving records, credit union powers, mergers, and the Credit Union Council.
- Requires criminal background checks whenever the approval of the Superintendent of Financial Institutions is required for a person to serve as an organizer, incorporator, director, officer, or controlling person of-- or to otherwise have a substantial interest in or participate in the management of--a bank, savings and loan association, savings bank, money transmitter, credit union, or credit union share guaranty corporation.

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\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Makes a change in the Agricultural Commodity Handlers Law relative to the security provided by a handler to a depositor under a delayed price agreement.

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## **CONTENT AND OPERATION**

### **Credit Union Law**

#### **Overview**

Generally, credit unions are nonprofit cooperative financial institutions whose customers ("members") can qualify for membership in a number of ways, such as by residing in a common geographic area or being employed by the same employer. 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 or federally chartered.

The act modifies the Credit Union Law (R.C. Chapter 1733.) with respect to the voting rights of members, boards of directors, record-keeping requirements, methods for preserving records, powers of a credit union, mergers, and the Credit Union Council.

#### **Voting rights of members**

(R.C. 1733.13)

Under continuing law, if the articles or regulations of a credit union permit, those entitled to attend a meeting of the credit union's members may vote by mail ballot or by proxy. To be valid, however, the form of the mail ballot or proxy must have the prior written approval of the Superintendent of Credit Unions.

The act provides an alternative to this prior approval requirement. Under the act, a particular form of mail ballot or proxy may also be used if it complies with criteria established by the Superintendent.

#### **Boards of directors**

**Election** (R.C. 1733.15). The act states that, if the number of candidates for a credit union's board of directors does not exceed the number of director positions being elected, those candidates are to be considered elected.

**Appointment of audit committees** (R.C. 1733.19). Under continuing law, a board of directors may appoint a supervisory audit committee of at least three

voting members, *or* employ a public accountant or public accounting firm, to audit the credit union's books. If a board adopts the latter approach, the act permits it to appoint an audit committee to oversee the public accountant or accounting firm.

**Record-keeping requirements**

**In general** (R.C. 1733.291). Credit unions are required by the act to retain or preserve specified records and supporting documents for a certain period of time.

The following records and documents must be retained for **one year**:

(1) Broker's confirmations, invoices, and statements relating to security transactions of the credit union or for or with its customers--from the date of transaction;

(2) Corporate resolutions, partnership authorizations, and similar authorizations relating to closed accounts, loans that have been paid, or other completed transactions--from the date of closing, payment, or completion;

(3) Ledger records of safe deposit accounts--from the date of the last entry on the ledger;

(4) Night depository records--from the date of transaction;

(5) Records relating to closed Christmas club or similar limited duration special purpose accounts--from the date of closing;

(6) Records relating to customer collection accounts--from the date of transaction;

(7) Stop payment orders--from the effective date;

(8) All records relating to closed consumer credit loans and discounts--from the date of closing; and

(9) Deposit tickets relating to demand deposit accounts--from the date of deposit.

The following must be retained for **six years**:

(1) Deposit and withdrawal tickets relating to open or closed savings accounts--from the date of transaction;

(2) Individual ledger sheets or other records serving the same purpose that show a zero balance and that relate to demand, time, or savings deposit accounts,

and safekeeping accounts--from the date of last entry, *or*, where the ledger sheets or other records show an open balance--from the date of transfer of the balance to another ledger sheet or record;

(3) Official checks, drafts, money orders, and other instruments for the payment of money that were issued by the credit union and have been canceled--from the date of issue;

(4) Records relating to closed escrow accounts--from the date of closing;

(5) Records, other than corporate resolutions, partnership authorizations, and similar authorizations relating to closed loans and discounts other than consumer credit loans and discounts--from the date of closing;

(6) Safe deposit access tickets and correspondence or documents relating to access--from the date of transaction;

(7) Lease or contract records relating to closed safe deposit accounts--from the date of closing;

(8) Signature cards relating to closed demand, savings, or time accounts, closed safe deposit accounts, or closed safekeeping accounts--from the date of closing;

(9) Undelivered statements for demand deposit, negotiable order of withdrawal, savings, agency, brokerage, or other accounts for which customer statements are prepared, and canceled checks or other items--from the date of statement--provided the credit union has attempted to send the statements and checks or other items to its customer, has held them pursuant to the instructions of or an agreement with its customer, or has made them available to its customer.<sup>1</sup>

The Superintendent of Financial Institutions is authorized to designate a retention period of either one year or six years for any record maintained by a credit union that is *not* listed above. Records that are not listed above *and* for which the Superintendent has not designated a retention period must be retained or preserved for six years from the date of completion of the transaction to which the record relates or, if the last entry has been transferred to a new record showing the continuation of a transaction not yet completed, from the date of the last entry.

If a particular document may be classified under either the one-year retention period or the six-year retention period, the six-year retention period

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<sup>1</sup> The act states that, in construing any of the terms used in these record-keeping provisions, reference may be made to "general credit union usage." (R.C. 1733.291(D).)

applies. Records that have been retained or preserved for the applicable time period may be disposed.

Any action by or against a credit union based on, or the determination of which would depend on, the contents of records for which a period of retention or preservation is set forth in the act or by the Superintendent in accordance with the act, must be brought within the time for which the record is required to be retained or preserved.

Lastly, a credit union may comply with the record-keeping requirements described above by maintaining the records in the manner provided for in continuing law. (See R.C. 1733.29.)

**Suspicious activity reports** (R.C. 1733.29(E)). If a credit union files a suspicious activity report pursuant to rules adopted by the Superintendent or National Credit Union Administration regulation, the credit union must maintain a copy of the report, and the original of all attachments to the report, for a period of five years from the date the report is filed.

#### **Methods for preserving records**

(R.C. 1733.292<sup>2</sup>)

The act permits a credit union, for any business purpose, to retain a document, paper, or other instrument or record (hereinafter "document or record") by use of a process to record, copy, photograph, or store a representation of the original document or record, *if* all of the following apply:

(1) The process correctly and accurately copies or reproduces, or provides a means for correctly and accurately copying or reproducing, the original document or record with regard to both its substance and appearance. The copy or reproduction need not, however, reflect the original medium, size, or color unless the medium, size, or color is necessary to establish the authenticity of the original.

(2) The process does not permit the recording, copy, photographic image, or stored representation of the original document or record to be altered or manipulated.

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<sup>2</sup> The act moves division (H) of existing section 1733.29 to division (D) of proposed section 1733.292, with no changes. That division addresses the legal efficacy of recordings, copies, photographic images, magazines, or stored representations of original documents, paper, or other instruments or records.

(3) The medium the process uses to record, copy, photograph, or store a representation of the original document or record is a durable medium for retaining and reproducing records.

The Superintendent of Financial Institutions is to identify and publish a list of processes that satisfy these conditions. A credit union that uses a process authorized by the Superintendent must also provide for safekeeping and examining, viewing, or projecting the records preserved, and for producing reproductions of the original records.

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

**Safekeeping function** (R.C. 1733.242). The act permits a credit union to do the following, on terms and conditions the credit union prescribes:

(1) Provide safes, vaults, safe deposit boxes, night depositories, and other secure receptacles for the uses, purposes, and benefits of its members;

(2) Receive tangible property and evidence of tangible or intangible property for safekeeping using (a) the credit union's safes, vaults, secure receptacles, or safekeeping system, (b) the safes, vaults, secure receptacles, or safekeeping system of another credit union, or (c) the safekeeping system of a safekeeping agent or custodian. The Superintendent of Financial Institutions is required to promulgate rules to qualify a credit union, safekeeping agent, or custodian that may receive from another credit union tangible property and evidence of tangible or intangible property for safekeeping.

The act also authorizes a credit union to enter into an agreement to rent a safe deposit box to a minor and accept the appointment of a minor as agent or deputy on any deposit or safe deposit box by any person, including a minor, maintaining the deposit or safe deposit box. When a credit union enters into a safe deposit box rental agreement with a minor, the terms and conditions of the agreement are binding on the minor the same as a person of legal age who rents a safe deposit box; the relationship between the credit union and the minor regarding the agreement is in all respects the same as if the minor were a person of legal age; and the credit union incurs no liability for any transaction regarding the safe deposit box solely because of doing business with a minor. The act states, however, that it is not to be construed as limiting the parental rights provided by, or the rights of a guardian appointed pursuant to, the existing Guardians/Conservatorships Law (R.C. Chapter 2111.).

**Payment of shares, accounts, and deposits** (R.C. 1733.241). In the event a share, share account, or deposit is made in the name of two or more persons, payable to either or the survivor, a credit union is authorized by the act to pay all

or any part of, or any interest earned on, the share, share account, or deposit to either of the named persons, or the guardian of the estate of either of the named persons, whether or not the other person is living. The act provides that the receipt or acquittance of the person paid is a sufficient release and discharge of the credit union for any payments made from the account to that person.

The act also permits a credit union to enter into a written contract with a natural person for the proceeds of the person's shares, share accounts, or deposits to be payable on the death of that person to another person, or to any entity or organization, in accordance with the terms, restrictions, and limitations set forth in continuing law (R.C. 2131.10 and 2131.11--Statute of Perpetuities).

**Recognition of certain claims to credit union property** (R.C. 1733.243). Under the act, if any claim is made to any share, share account, deposit, safe deposit box, property held in safekeeping, security, obligation, or other property in the credit union's possession or control by any person (including any member, depositor, individual, or group of individuals) without clear authority to draw on or exercise any right or control with respect to the property, the credit union is not required to recognize the claim without one of the following:

(1) A court order, issued by a court of competent jurisdiction and served on the credit union, enjoining or restraining the credit union from taking any action with respect to the property or instructing the credit union to pay the balance of the account, provide access to the safe deposit box, or deliver the property as provided in the order;

(2) A bond, provided by the person making the claim, in the form and amount and with sureties satisfactory to the credit union, indemnifying the credit union against any liabilities, loss, and expenses the credit union might incur because of its recognition of the claim or because of its refusal, due to the claim, to honor or recognize any right with respect to the property.

### **Mergers**

(R.C. 1733.34)

Former law permitted a credit union to merge with any other credit union under the other credit union's charter if the merger is approved by (1) the board of directors of each credit union and (2) two-thirds of the members of each credit union represented at a meeting of members at which at least 10% of the entire membership is present, unless a meeting of members of either credit union has been waived by the Superintendent of Credit Unions.

The act revises the approval requirement for credit union members. Under the act, a merger must be approved by a *majority* of the members of each credit union represented at a meeting of members *in person, by ballot, or by proxy* at which a *quorum* of the entire membership is present. The act also states that the Superintendent may waive the members' vote if it is in the interest of the members, credit union, or for any other reason the Superintendent deems proper.

### **Credit Union Council**

(R.C. 1733.329)

Former law created the Credit Union Council within the Division of Financial Institutions of the Department of Commerce. The Deputy Superintendent for Credit Unions is a member of the Council and its chairperson. The remaining six members are appointed by the Governor with the advice and consent of the Senate. Of those six members, at least one must be a director or chief executive officer of a state-chartered credit union with \$5 million or less in assets and at least one must be a director or chief executive officer of a state-chartered credit union with more than \$5 million in assets.

The act changes those asset threshold amounts to \$35 million and \$50 million, respectively.

### **Criminal background checks**

(R.C. 109.572, 1121.23, 1155.03, 1163.05, 1315.141, 1733.47, and 1761.26)

The act requires the Superintendent of Financial Institutions to request a criminal records check whenever the Superintendent's approval is required under law, or under an order or supervisory action issued or taken under law, for a person to serve as an organizer, incorporator, director, executive officer, or controlling person of, or to otherwise have a substantial interest in or participate in the management of, a bank, savings and loan association, savings bank, licensee under the Money Transmitters Law (R.C. 1315.01 to 1315.18), credit union, or credit union share guaranty corporation. The request must (1) be made to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), or a vendor approved by the Bureau, (2) be based on the person's fingerprints, and (3) include a request that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check.

On receipt of such a request, the Superintendent of BCII must conduct the check in accordance with existing procedures governing BCII criminal records checks to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded

guilty to any criminal offense under any existing or former law of this state, another state, or the United States. Any fee charged for providing the criminal records check is to be paid by the person who is the subject of the request.

### **Agricultural Commodity Handlers Law**

(R.C. 926.29)

In general, the Agricultural Commodity Handlers Law (R.C. Chapter 926.) regulates those who act as intermediaries between a producer of an agricultural commodity<sup>3</sup> and the retailer or consumer. Agricultural commodity handling mainly involves purchasing from producers agricultural commodities for any use in excess of a certain amount; performing certain marketing functions with respect to agricultural commodities; or operating a warehouse in which agricultural commodities are stored or shipped. Agricultural commodity handlers must hold a valid license issued by the Director of Agriculture.

The act modifies the Agricultural Commodity Handlers Law with respect to delayed price agreements between a person ("depositor") who sells an agricultural commodity to a licensed handler. Continuing law defines "delayed price agreement" as an executory contract that covers the sale and transfer of title of an agricultural commodity and states the service charges and the method for pricing the commodity at a later date. Under this scenario, a depositor may demand a specified amount as security for payment for the commodity, and the handler must satisfy that demand by either of the following:

- (1) Payment to the depositor by cash or *bank* draft on the account of the handler; or
- (2) Causing an irrevocable letter of credit to be issued to the depositor by a *bank* securing payment in the specified amount.

With respect to (1), above, the act removes the term "bank" when referring to the type of draft on the account of the handler. With respect to (2), above, the act replaces the term "bank" with the broader term "financial institution."

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<sup>3</sup> "Agricultural commodity" means barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop designated by rule of the Director of Agriculture (R.C. 926.01(A), not in the act).

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## HISTORY

ACTION	DATE
Introduced	11-01-07
Reported, S. Finance & Financial Institutions	02-06-08
Passed Senate (32-0)	03-11-08
Reported, H. Financial Institutions, Real Estate & Securities	05-22-08
Passed House (94-1)	05-28-08

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