



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4506/1
ARG:cjs&kjf

2015 ASSEMBLY BILL 807

January 25, 2016 - Introduced by Representatives CRAIG, KUGLITSCH, BRANDTJEN, E. BROOKS, BROSTOFF, CZAJA, HINTZ, JACQUE, KREMER, KRUG, LOUDENBECK, MURPHY, NYGREN, PETRYK, RIEMER, RIPP, ROHRKASTE, SARGENT, SINICKI, SKOWRONSKI, TAUCHEN, ZEPNICK and DANOU, cosponsored by Senators STROEBEL, GUDEX, BEWLEY and CARPENTER. Referred to Committee on Financial Institutions.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 186.11 (2) (b) and 186.22; *to renumber and amend* 186.11
2 (2) (a), 186.235 (16) and 186.70; *to amend* 186.071 (1) (e), 186.113 (8), 186.12
3 (3), 186.13, 186.235 (7m) and 186.70 (title); *to repeal and recreate* 186.17;
4 and *to create* 186.01 (4), 186.07 (8), 186.235 (7) (b) 3., 186.235 (16) (b) and
5 186.70 (2) of the statutes; **relating to:** credit union operations and modifying
6 rules promulgated by the Department of Financial Institutions.

Analysis by the Legislative Reference Bureau

This bill makes various statutory and administrative rule changes related to the operations of credit unions. Among the statutory changes, the bill does all of the following:

1. Specifies that a credit union must maintain sufficient reserves to meet anticipated withdrawals, commitments, and loan demand and must maintain at least the level of reserves required by the National Credit Union Administration (NCUA).

2. Creates an exception to the requirement that the Office of Credit Unions in the Department of Financial Institutions conduct an examination of the records and accounts of each credit union at least once every 18 months, allowing, in lieu of this examination, the OCU to accept an examination conducted by the NCUA.

3. Removes a limit under current law on the amount that a credit union may make in donations and grants approved by the credit union's board of directors.

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4. Creates provisions relating to director conflict of interest transactions, defined as a transaction with the credit union in which a director of the credit union has a direct or indirect interest. The bill specifies that a conflict of interest transaction is not voidable by the credit union solely because of the director's interest in the transaction if the transaction was fair to the credit union or if the material facts were disclosed or known and the transaction was authorized, approved, or ratified in the manner specified in the bill.

5. Provides a procedure under which a group of credit union members have a right to inspect and copy nonconfidential portions of the credit union's accounting books and records and the minutes of credit union proceedings.

6. Authorizes credit unions and the OCU to provide confidential examination reports to the credit union's attorneys, independent certified public accountants, or other consultants or advisers who have agreed in writing to maintain the confidentiality of the report.

7. Revises the contents of the oath of office that credit union directors, officers, committee members, and employees must take with respect to personal pecuniary interests and conflicts of interest.

8. Provides that a member expelled from a credit union may petition the board of directors in writing for reconsideration of the member's expulsion, but no longer has a right to a hearing.

9. Repeals a statutory provision authorizing ten or more credit unions, with the OCU's approval, to form the Credit Union Finance Corporation.

10. Repeals a statutory provision imposing a limit on the value of a building used for credit union operations.

The bill also makes the following changes to DFI's administrative rules:

1. The bill allows a credit union to provide written notice, instead of obtaining express or implied prior approval, before placing and operating an automated teller machine at a location away from a credit union office.

2. The bill removes loan officers from the prohibition against preferential treatment for loan transactions involving directors, executive officers, and credit committee members.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 186.01 (4) of the statutes is created to read:

2 186.01 (4) "Net worth" means the aggregate of retained earnings of a credit
3 union, as determined according to generally accepted accounting principles, and
4 other forms of capital approved by the director of the office of credit unions.

5 **SECTION 2.** 186.07 (8) of the statutes is created to read:

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1 186.07 (8) DIRECTOR CONFLICT OF INTEREST. (a) In this subsection, “conflict of
2 interest transaction” means a transaction with the credit union in which a director
3 of the credit union has a direct or indirect interest.

4 (b) A conflict of interest transaction is not voidable by the credit union solely
5 because of the director’s interest in the transaction if any of the following is true:

6 1. The material facts of the transaction and the director’s interest were
7 disclosed or known to the board of directors or a committee of the board of directors
8 and the board of directors or committee authorized, approved, or specifically ratified
9 the transaction under par. (d).

10 2. The transaction was fair to the credit union.

11 (c) For purposes of this subsection, the circumstances in which a director of the
12 credit union has an indirect interest in a transaction include a transaction under any
13 of the following circumstances:

14 1. Another entity in which the director has a material financial interest or in
15 which the director is a general partner is a party to the transaction.

16 2. Another entity of which the director is a director, officer, or trustee is a party
17 to the transaction and the transaction is or, because of its significance to the credit
18 union, should be considered by the board of directors of the credit union.

19 (d) For purposes of par. (b) 1., a conflict of interest transaction is authorized,
20 approved, or specifically ratified if it receives the affirmative vote of a majority of the
21 directors on the board of directors or on the committee acting on the transaction who
22 have no direct or indirect interest in the transaction. If a majority of the directors
23 who have no direct or indirect interest in the transaction vote to authorize, approve,
24 or ratify the transaction, a quorum is present for the purpose of taking action under
25 this subsection. The presence of, or a vote cast by, a director with a direct or indirect

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1 interest in the transaction does not affect the validity of any action taken under par.
2 (b) 1. if the transaction is otherwise authorized, approved, or ratified as provided in
3 this subsection.

4 **SECTION 3.** 186.071 (1) (e) of the statutes is amended to read:

5 186.071 (1) (e) Avoid initiating or participating in any action that may be in
6 that person's present to that person a personal pecuniary conflict of interest.

7 **SECTION 4.** 186.11 (2) (a) of the statutes is renumbered 186.11 (2) and amended
8 to read:

9 186.11 (2) CREDIT UNION PROPERTY. ~~Subject to par. (b), a~~ A credit union may
10 purchase, hold, and dispose of property as necessary for or incidental to its
11 operations.

12 **SECTION 5.** 186.11 (2) (b) of the statutes is repealed.

13 **SECTION 6.** 186.113 (8) of the statutes is amended to read:

14 186.113 (8) DONATIONS. Make donations and grants, ~~the total of which may not~~
15 ~~exceed 1.0 percent of regular reserves within a given year,~~ if the board of directors
16 approves any such donation or grant and the approval is based on a determination
17 that the donation or grant is in the best interest of the credit union and is reasonable
18 given the size and financial condition of the credit union.

19 **SECTION 7.** 186.12 (3) of the statutes is amended to read:

20 186.12 (3) EXPENDITURES. ~~The~~ To the extent permitted by a credit union's
21 bylaws, the officers elected by the board of directors, and the members of the credit
22 committee ~~and loan officers~~ may receive such compensation as the board authorizes,
23 but the expenditures of the credit union for all purposes shall be paid from its
24 earnings.

25 **SECTION 8.** 186.13 of the statutes is amended to read:

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1 **186.13 Expulsion.** If the board of directors adopts a written policy, a credit
2 union may expel a member if the member neglects or refuses to comply with this
3 chapter or the credit union bylaws or if the board has other just cause. The credit
4 union shall provide notice to the member in writing of the reason for expulsion. The
5 notice shall include a description of the member's right to a hearing petition the
6 board for reconsideration of the member's expulsion and the time period for the
7 member to request a hearing petition. If a member requests a hearing petitions the
8 board in writing within 45 days of receipt of the expulsion notice, the board shall give
9 the member an opportunity to be heard on reconsider the expulsion within 90 days
10 after the date of the expulsion notice.

11 **SECTION 9.** 186.17 of the statutes is repealed and recreated to read:

12 **186.17 Reserves.** A credit union shall maintain sufficient reserves to meet
13 anticipated withdrawals, commitments, and loan demand. A credit union shall
14 maintain at least the level of reserves required for it by the national credit union
15 administration. The office of credit unions may prescribe additional reserve
16 requirements for an individual credit union based on examination findings or other
17 reports available to the office.

18 **SECTION 10.** 186.22 of the statutes is repealed.

19 **SECTION 11.** 186.235 (7) (b) 3. of the statutes is created to read:

20 186.235 (7) (b) 3. Provide examination reports to a credit union's attorneys,
21 independent certified public accountants, or other consultants or advisers who have
22 agreed in writing to maintain the confidentiality of the reports.

23 **SECTION 12.** 186.235 (7m) of the statutes is amended to read:

24 186.235 (7m) **RETURN OF EXAMINATION REPORTS.** Examination reports possessed
25 by a credit union are confidential, remain the property of the office of credit unions,

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1 and shall be returned to the office of credit unions immediately upon request. This
2 subsection does not prohibit a credit union from providing an examination report to
3 its attorneys, independent certified public accountants, or other consultants or
4 advisers who have agreed in writing to maintain the confidentiality of the report.

5 **SECTION 13.** 186.235 (16) of the statutes is renumbered 186.235 (16) (a) and
6 amended to read:

7 186.235 (16) (a) At Except as provided in par. (b), at least once every 18 months,
8 the office of credit unions shall examine the records and accounts of each credit
9 union. For that purpose the office of credit unions shall have full access to, and may
10 compel the production of, each credit union's records and accounts. The office of
11 credit unions may administer oaths to and examine each credit union's officers and
12 agents.

13 **SECTION 14.** 186.235 (16) (b) of the statutes is created to read:

14 186.235 (16) (b) In lieu of the examination under par. (a), the office of credit
15 unions may accept an examination conducted by the national credit union
16 administration.

17 **SECTION 15.** 186.70 (title) of the statutes is amended to read:

18 **186.70 (title) Record search; members' inspection of records.**

19 **SECTION 16.** 186.70 of the statutes is renumbered 186.70 (1) and amended to
20 read:

21 186.70 (1) A credit union is entitled to reimbursement for expenses and costs
22 incurred in searching for, reproducing and transporting books, papers, records and
23 other data required to be produced by legal process, unless otherwise prohibited by
24 law from collecting these expenses and costs or unless the person seeking the
25 production is a government unit, as defined in s. 108.02 (17). The expenses and costs

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1 shall be paid by persons seeking such production. If a credit union is entitled to
2 reimbursement under this ~~section~~ subsection, a credit union may not be required to
3 produce books, papers, records and other data in response to legal process unless the
4 expenses and costs, identified in an itemized invoice to be provided by the credit
5 union, are paid or unless payment is tendered to the credit union in cash or by
6 certified check or draft.

7 **SECTION 17.** 186.70 (2) of the statutes is created to read:

8 186.70 (2) (a) A group of members of a credit union has the right, upon
9 submission of a petition to the credit union that satisfies the requirements under par.
10 (b), to inspect and copy nonconfidential portions of all of the following:

- 11 1. The credit union's accounting books and records.
- 12 2. The credit union's minutes of the proceedings of the credit union's members,
13 board of directors, and committees of directors.

14 (b) The petition under par. (a) shall describe the particular records to be
15 inspected and state a proper purpose for the inspection, which must be a purpose
16 related to the protection of the members' financial interests in the credit union. The
17 petition shall state that the petitioners as a whole, or certain named petitioners,
18 agree to pay the direct and reasonable costs associated with search and duplication
19 of requested material. The petition shall also state that the inspection is not desired
20 for any purpose other than the stated purpose; that the members signing the petition
21 will not sell or offer for sale any information obtained from the credit union; and that
22 the members signing the petition have not within 5 years immediately preceding the
23 signature date sold or offered for sale any information acquired from the credit union
24 or aided or abetted any person in procuring any information from the credit union
25 for purposes of sale. The petition shall name one member, and one alternate member,

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1 who shall represent the petitioners on issues such as inspection procedures, costs,
2 and potential disputes. At least one percent of the credit union's members, with a
3 minimum of 20 members and a maximum of 500 members, must sign the petition.
4 Each member who signs the petition must have been a member of the credit union
5 for at least 180 days at the time the petitioners submit the petition to the credit
6 union.

7 (c) 1. A credit union shall respond to petitioners within 14 days of receiving a
8 petition under par. (b). In its response, a credit union shall inform petitioners either
9 that it will provide inspection of the requested material and, if so, when, or, if a credit
10 union is going to withhold all or part of the requested material, it shall inform
11 petitioners what part of the requested material it intends to withhold and the
12 reasons for withholding the requested material. As soon as possible after receiving
13 a petition, a credit union shall schedule inspection and copying of nonconfidential
14 requested material it determines petitioners may inspect and copy.

15 2. Inspection may be made in person or by agent or attorney and at any
16 reasonable time. The credit union may, at its option, skip inspection and deliver
17 copies of requested documents directly to the petitioners. Member inspection rights
18 under this subsection are in addition to any other member inspection rights afforded
19 by the credit union's charter or bylaws or other statutory provisions or rules.

20 3. If the credit union denies inspection because the petitioners have failed to
21 obtain the minimum number of valid signatures, the credit union shall inform the
22 petitioners which signatures were not valid and why.

23 (d) Members do not have the right to inspect any portion of the books, records,
24 or minutes of a credit union if any of the following applies:

25 1. Statutory provisions or rules prohibit disclosure of that portion.

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1 2. The publication of that portion could cause the credit union predictable and
2 substantial financial harm.

3 3. That portion contains nonpublic personal information, as defined in 12 CFR
4 1016.3.

5 4. That portion contains information about credit union employees or officials
6 the disclosure of which would constitute a clearly unwarranted invasion of personal
7 privacy.

8 (e) A credit union may charge petitioners the direct and reasonable costs
9 associated with search and duplication. The credit union may not charge for other
10 costs, including indirect costs or attorney fees.

11 (f) In the event of a dispute between a credit union and its members concerning
12 a petition for inspection or the associated costs, either party may submit the dispute
13 to the director of the office of credit unions. The director, after obtaining the views
14 of both parties, shall direct the credit union either to withhold the disputed materials
15 or to make them available for member inspection and copying. The director may
16 place conditions upon release. The decision of the director is a final agency decision
17 and is not appealable to the credit union review board.

18 **SECTION 18.** DFI-CU 63.03 of the administrative code is amended to read:

19 **DFI-CU 63.03 Advance notice and approval required.** Each credit union
20 proposing to engage in an activity authorized under s. 186.113 (15), Stats., or
21 proposing to change the place or manner in which it engages in such an activity, shall
22 file with the director ~~an application~~ a written notice containing such information as
23 the director may from time to time prescribe. If the director regularly receives
24 information on additions, deletions or changes in locations of remote terminals from
25 a supplier, a credit union is excused from filing ~~an application~~ a written notice merely

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1 to change the place at which it offers the services. No credit union may commence
2 any such activity ~~unless the place and manner in which the activity is conducted has~~
3 ~~been approved by the director in writing or the director does not take written~~
4 ~~objection to the credit union's completed application within 30 days after it has been~~
5 ~~filed~~ until the credit union has filed the written notice under this section. A credit
6 union may not commence or continue to engage in any activity authorized under s.
7 186.113 (15), Stats., if, in the opinion of the director, the activity is beyond the
8 financial or management capabilities of the credit union, would result in unfair
9 competition among financial institutions, or is otherwise in violation of this chapter.

10 **SECTION 19.** DFI-CU 69.02 of the administrative code is amended to read:

11 **DFI-CU 69.02 Definition.** In this chapter, "official" means any director,
12 executive officer, ~~loan officer,~~ credit committee member or internal auditor of a credit
13 union.

14 (END)