



# 2020 KEY STATE ISSUES

## Credit Union Difference and Not-For-Profit Tax Status

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- CUs are not-for profit co-ops, owned by their members.
- CUs do not pay corporate income tax because of their not-for-profit co-op business structure, as opposed to for-profit banks. CUs pay all other applicable taxes, like payroll and social insurance, real estate, UBIT, sales (state charters), etc.
- Banks can raise capital for the equity and bond markets. CUs can only raise capital through retained earnings.
- CU profits are shared with members through higher savings returns, lower loan rates, fewer and lower fees, low-cost or free products and services, and financial literacy programs.
- More than half of CU-originated mortgages go to borrowers earning middle incomes or less.
- CU business lending is growing dynamically to support our communities and businesses.
- CU Boards are drawn from members, elected by the members, and serve as unpaid volunteers. Banks can provide stock options and ownership to their boards, executives, and staff. CU directors and officers are focused on service as opposed to benefiting from stock appreciation.
- This important structural difference as well as CUs' commitment to serve the unique needs of the underbanked and local economies, has contributed to the bi-partisan support for the federal and state corporate income tax exemptions.
- CUs focus on financial education for youth and adults.
- While the consumer and business services provided by CUs may look and feel similar to banks, it's the not-for-profit co-op business structure that drives the CU tax status.

## Small Dollar Loans by Payday Lenders

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- HB 5097 was introduced by Rep. Brandt Iden to allow payday lenders to offer installment loans for as much as \$2500, for up to 1 year with a monthly service fee that equates to triple digit APR at 132%.
- The MCUL opposes HB 5097, and encourages legislators to explore meaningful and non-predatory solutions to address the need for additional financial products in the market.
- Credit unions have long opposed payday lending in general, and the expansion of authority for payday licensees into this space. Our members are all-too familiar with the negative effects and cycle of debt that many borrowers experience when using payday loans.
- Many credit unions offer alternative products to help borrowers avoid these types of loans, provide free financial counseling, and will work with members in their individual situations when they need help. The triple-digit APR of this proposed product dwarfs Michigan usury caps, allowable rates for PALs, and the rates on legitimate alternative products offered by credit unions.
- While successive versions of this bill have incorporated some additional consumer protections, such as "ability to repay" (ATR) requirements, the legislation still allows the high-priced loan to be renewed by another small loan. A lender could loan to a borrower that has an outstanding small loan or payday loan from another provider, still leaving the window open for cyclical renewals on products that are difficult for vulnerable borrowers to pay back.
- The COVID-19 crisis has wreaked havoc on our economy and the ability of many people to make ends meet. The legislature should carefully consider the impact of new lending products, when challenged borrowers are at their most vulnerable. Rather, we should be looking at appropriate regulatory relief for traditional financial institutions and ways to foster more affordable emergency consumer lending.
- The legislation passed the House 58-49, and has been referred to the Senate Regulatory Reform Committee.

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## Data Security and Privacy

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- Since 2005, tens of thousands of data breaches have occurred, and more than 11.6 billion records have been exposed nationwide. The retail industry's self-policing and lack of meaningful security standards is woefully inadequate.
- Financial institutions are forced to assume the costs related to breaches, including card replacement, fraud control, member communication, and fraudulent transaction cost.
- HB 4186-4187 have been introduced to modernize Michigan's data breach notification law, providing a date certain for consumer notification.
- These bills have passed the House Financial Services Committee, and await consideration by the House Ways and Means Committee.
- The legislation should include a mandate that retailers and card processors adhere to their card brand agreements with regard to breach procedures and information security.
- The legislature should also enact processor- to-processor notification processes to allow CUs and banks to police potentially affected cards as soon as possible.

## Cannabis Banking

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- Despite Michigan having legalizing medical and recreational marijuana use, CUs are apprehensive about providing financial services to cannabis businesses, because it remains federally illegal.
- The Secure and Fair Enforcement (SAFE) Banking Act of 2019, H.R. 1595 and S. 1200, and the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act of 2019, S. 1028 and H.R. 2093, have been introduced.
- The U.S. House Financial Services Committee has marked up and reported the SAFE Banking Act. No actions have been scheduled yet on the STATES Act bills.
- Both would provide safe harbor protections to financial institutions providing services to legal cannabis businesses in states where cannabis is legalized.
- Bringing cannabis-related cash into the legitimate framework of financial institutions is a public safety, trafficking prevention, and in some respects even a public health necessity.
- Many Michigan CUs are likely already involved through other business clients or municipalities that service or regulate these entities.
- The Michigan House adopted H.R. 101, sponsored by Rep. Yousef Rabhi (D-Ann Arbor), urging Congress to adopt safe harbor legislation. The Michigan Senate should act on a similar measure by Sens. Curtis Hertel (D-East Lansing) and Peter Lucido (R-Shelby Twp), S.C.R. 9.
- Governor Gretchen Whitmer, Attorney General Dana Nessel and DIFS Director Anita Fox have joined sign on letters with their respective colleagues, urging federal action. The National Association of State Treasurers adopted and sent a similar resolution.

## Assignment of Rents

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- When a commercial loan defaults, the rights and obligations of creditors and tenants with regard to rent proceeds can be unclear.
- Usually a creditor takes a separate assignment of rents from the debtor, which provides a direct right to rent payments in the event of a default. But even then, the right to payment is uncertain against other competing creditors.
- If the tenant pays the mortgagor without notice of the assignment and the mortgagee subsequently demands another payment, this may put tenants in the untenable position of having to pay twice.
- The UARA provides basic rules to establish the "security interest" of the creditor, the rights of tenants to notice and the effect of notice, and the priority of the interest against other creditors.

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## Funding for E-Recording of Real Property Documents

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- Despite the legislature's authorization of e-recording for real property documents in 2010, and e-notary in 2018, 32 counties in Michigan are still not offering the capability.
- Vendors and other experts peg the amount per county between \$1,000-\$30,000, but likely in the range of \$7,000-12,000 to upgrade for the capability.
- A small appropriation (est. \$500,000) over three years in the General Government budget (DTMB) could allow for grants to remaining counties to upgrade their systems and software and provide residual funding to allow e-capable counties to update.
- A small match could be incorporated to ensure counties are invested.

## Secretary of State Services in Financial Institutions

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- HB 5171 has been introduced by Rep. Matt Maddock to allow financial institutions to perform certain Secretary of State branch office services.
- The introduced version would allow for driver license and state ID renewals, as well as vehicle transactions, such as plate renewals.
- Initial concerns deal more with driver-side transactions. State law requires interaction with organ donation laws, and the state constitution requires voter registration to be offered, in conjunction with these transactions.
- Some state-chartered credit unions have participated in a pilot program with DIFS and SOS on minor vehicle related transactions, ancillary to car loans.
- The MCUL is reviewing the legislation in consultation with SOS.

## Michigan Saves

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- Michigan Saves is a program helping to provide loans for energy efficient upgrades for homes and businesses.
- From inception through last year, participating credit unions have financed about 75% of these loans, over \$150M in financing.
- The average residential loan is about \$10,600.
- Governor Whitmer included \$5M in her FY21 budget proposal to bolster loan loss reserves for Michigan Saves.
- The funding is needed to ensure continuation of the program, and to hopefully allow other credit unions to participate.