



# 2019 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 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.
- 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.
- CUs focus on financial education for youth and adults.
- 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.
- 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.

## 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.

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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.

## Military Account Escheats

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- Michigan's unclaimed property laws require dor-mant accounts to be escheated after the passage of certain time periods. Active duty military accounts escheat at 3 years, unless the member is deployed overseas, in which case the period is 5 years.
- US-DOD does not provide information allowing credit unions to differentiate between personnel deployed domestically or overseas. Several credit unions have been written up by examiners for holding accounts for too long, while trying to avoid escheating a military account too early.
- SB 125 has been introduced to eliminate the distinction between overseas and domestic deployment for purposes of escheat periods.
- MCUL is working with the sponsor, Committee Chair, and MI Dept of Treasury to refine the language to provide maximum protection on various accounts for deployed military personnel.
- The Senate Families, Seniors, and Veterans Committee has reported the bill, and action by the full senate is expected soon.

## 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.

## 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.

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## 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.