

1 **FINANCIAL INSTITUTION AND SERVICES AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: James A. Dunnigan

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to financial institutions and financial services.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies references to the Utah League of Credit Unions;
- 13 ▶ clarifies dividend requirements;
- 14 ▶ repeals provisions related to loans to or investment in affiliates;
- 15 ▶ addresses stock ownership by banks;
- 16 ▶ deletes references to the Office of Thrift Supervision;
- 17 ▶ addresses voting requirements for voluntary mergers;
- 18 ▶ modifies grandfathering of certain credit unions;
- 19 ▶ modifies exempted transactions under the Utah Consumer Credit Code;
- 20 ▶ addresses fees under the Utah Consumer Credit Code;
- 21 ▶ modifies exemptions under the Financial Institution Mortgage Financing Regulation
- 22 Act;
- 23 ▶ removes a probable cause requirement for the commissioner of financial institutions
- 24 requiring a lender, broker, or servicer to make records available to the
- 25 commissioner;
- 26 ▶ addresses fee restrictions;
- 27 ▶ repeals anti-tying provisions;



- 28 ▶ repeals surplus account provisions;
- 29 ▶ repeals provisions related to charging off losses and replenishment of surplus
- 30 accounts; and
- 31 ▶ makes technical and conforming amendments.

32 Money Appropriated in this Bill:

33 None

34 Other Special Clauses:

35 None

36 Utah Code Sections Affected:

37 **AMENDS:**

- 38 **7-1-701**, as last amended by Laws of Utah 2013, Chapter 73
- 39 **7-3-15**, as last amended by Laws of Utah 1996, Chapter 182
- 40 **7-3-20**, as last amended by Laws of Utah 2000, Chapter 260
- 41 **7-3-21**, as enacted by Laws of Utah 1981, Chapter 16
- 42 **7-5-7**, as last amended by Laws of Utah 2010, Chapter 378
- 43 **7-8-11**, as last amended by Laws of Utah 2004, Chapter 92
- 44 **7-9-20**, as last amended by Laws of Utah 2008, Chapter 126
- 45 **7-9-36**, as last amended by Laws of Utah 1994, Chapter 200
- 46 **7-9-39**, as last amended by Laws of Utah 2003, Chapter 327
- 47 **7-9-43**, as last amended by Laws of Utah 2010, Chapters 286 and 324
- 48 **7-9-44**, as last amended by Laws of Utah 1989, Chapter 267
- 49 **7-9-51**, as last amended by Laws of Utah 2003, Chapter 327
- 50 **7-9-53**, as last amended by Laws of Utah 2010, Chapter 324
- 51 **70C-1-202**, as last amended by Laws of Utah 2006, Chapter 161
- 52 **70C-8-203**, as last amended by Laws of Utah 2009, Chapter 72
- 53 **70D-2-201**, as last amended by Laws of Utah 2009, Chapter 372 and renumbered and
- 54 amended by Laws of Utah 2009, Chapter 72
- 55 **70D-2-203**, as renumbered and amended by Laws of Utah 2009, Chapter 72
- 56 **70D-2-305**, as renumbered and amended by Laws of Utah 2009, Chapter 72
- 57 **70D-3-102**, as last amended by Laws of Utah 2010, Chapter 379

58 **REPEALS:**

- 59 **7-3-3.3**, as enacted by Laws of Utah 1989, Chapter 267
- 60 **7-3-16**, as last amended by Laws of Utah 1983, Chapter 8
- 61 **7-8-12**, as last amended by Laws of Utah 2004, Chapter 92

63 *Be it enacted by the Legislature of the state of Utah:*

64 Section 1. Section **7-1-701** is amended to read:

65 **7-1-701. Representation and transacting business as financial institution**
66 **restricted -- Restricted names -- Penalty.**

67 (1) As used in this section, "transact business" includes:

- 68 (a) advertising;
- 69 (b) representing oneself in any manner as being engaged in transacting business;
- 70 (c) registering an assumed name under which to transact business; or
- 71 (d) using an assumed business name, sign, letterhead, business card, promotion, or
- 72 other indication that one is transacting business.

73 (2) Unless authorized by the department or an agency of the federal government to do
74 so, it is unlawful for a person to:

75 (a) transact business as a:

- 76 (i) bank;
- 77 (ii) savings and loan association;
- 78 (iii) savings bank;
- 79 (iv) industrial bank;
- 80 (v) credit union;
- 81 (vi) trust company; or
- 82 (vii) other financial or depository institution; or

83 (b) engage in any other activity subject to the jurisdiction of the department.

84 (3) (a) Except as provided in Subsections (3)(b) through (d), only the following may
85 transact business in this state under a name that includes "bank," "banker," "banking,"
86 "banque," "banc," "banco," "bancorp," "bancorporation," a derivative of these words, or another
87 word or combination of words reasonably identifying the business of a bank:

- 88 (i) a national bank;
- 89 (ii) a bank authorized to do business under Chapter 3, Banks;

90 (iii) a bank holding company; or

91 (iv) an industrial bank.

92 (b) A person authorized to operate in this state as a credit card bank, as described in
93 Section 7-3-3:

94 (i) may transact business under the name "credit card bank"; and

95 (ii) may not transact business under the name of "bank" unless it is immediately
96 preceded by "credit card."

97 (c) A nonbank subsidiary of a bank holding company may transact business under a
98 name restricted in Subsection (3)(a) if the name:

99 (i) is also part of the name of its parent holding company; or

100 (ii) is used for a group of subsidiaries of the parent holding company.

101 (d) The Utah Bankers Association or other bona fide trade association of authorized
102 banks may transact its affairs in this state under a name restricted under Subsection (3)(a) if it
103 does not operate and does not hold itself out to the public as operating a depository or financial
104 institution.

105 (4) (a) Except as provided in Subsection (4)(b), only the following may transact
106 business in this state under a name that includes "savings association," "savings and loan
107 association," "building and loan association," "building association," a derivative of these
108 words, or another word or combination of words reasonably identifying the business of a
109 savings and loan association:

110 (i) a federal savings and loan association; or

111 (ii) a federal savings bank.

112 (b) A national bank may transact business under a name restricted in Subsection (4)(a)
113 if the restricted words are part of the bank's corporate name.

114 (5) Only the following may transact business under the name "savings bank":

115 (a) a depository institution listed in Subsection (3)(a);

116 (b) a depository institution listed in Subsection (4)(a); or

117 (c) a depository institution authorized under the law of another state to operate in this
118 state as a savings bank.

119 (6) (a) Only an industrial loan company authorized to do business under Chapter 8,
120 Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state

121 under a name that includes "industrial loan company," "ILC," or another word, combination of
122 words, or abbreviation reasonably identifying the business of an industrial loan company.

123 (b) Only an industrial bank authorized to do business under Chapter 8, Industrial
124 Banks, may transact business in this state under a name that includes "industrial bank," "thrift,"
125 or another word, combination of words, or abbreviation reasonably identifying the business of
126 an industrial bank.

127 (7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do
128 business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact
129 business in this state under a name that includes "credit union" or another word or combination
130 of words reasonably identifying the business of a credit union.

131 (b) The restriction in Subsection (7)(a) does not apply to [~~the Utah League of Credit~~
132 ~~Unions~~] an association in this state that represents credit unions, a credit union chapter, or
133 another association affiliated with [~~the Utah League of Credit Unions~~] an association in this
134 state that represents credit unions that restricts its services primarily to credit unions.

135 (8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers
136 under Chapter 5, Trust Business, may transact business in this state under a name that includes
137 "trust," "trustee," "trust company," or another word or combination of words reasonably
138 identifying the business of a trust company.

139 (b) A business entity organized as a business trust, as defined in Section 7-5-1, may use
140 "business trust" in its name if it does not hold itself out as being a trust company.

141 (9) The restrictions of Subsections (3) through (8) do not apply to:

142 (a) the name under which an out-of-state depository institution operates a loan
143 production office in this state, if the commissioner approves the name as not being reasonably
144 likely to mislead the public;

145 (b) the name under which a service organization of a financial institution transacts
146 business, if the commissioner approves the name as not being reasonably likely to mislead the
147 public;

148 (c) the name under which a subsidiary of a depository or financial institution transacts
149 business, if the commissioner approves the name as not being reasonably likely to mislead the
150 public; or

151 (d) a trade association or other nonprofit organization composed of members of a

152 particular class of financial institutions using words applicable to that class.

153 (10) (a) Upon written request, the commissioner may grant an exemption to this
154 section if the commissioner finds that the use of an otherwise restricted name or word is not
155 reasonably likely to cause confusion or lead the public to believe that the person requesting the
156 exemption is a depository or financial institution or is conducting a business subject to the
157 jurisdiction of the department.

158 (b) In granting an exemption under Subsection (10)(a), the commissioner may restrict
159 or condition the use of the name or word or the activities of the person or business as the
160 commissioner considers necessary to protect the public.

161 (11) (a) A person and a principal and officer of a business entity violating this section
162 is guilty of a class A misdemeanor. Each day of violation constitutes a separate offense.

163 (b) In addition to a criminal penalty imposed under Subsection (11)(a), the
164 commissioner may issue a cease and desist order against a person violating this section. The
165 commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply
166 with the cease and desist order.

167 Section 2. Section **7-3-15** is amended to read:

168 **7-3-15. Dividends allowed -- Surplus requirements.**

169 (1) The board of directors of a bank may declare a cash or stock dividend out of the net
170 profits of the bank after providing for all expenses, losses, interest, and taxes accrued or due
171 from the bank, as it shall judge expedient.

172 (2) Before any dividend is declared pursuant to Subsection (1), not less than 10% of the
173 net profits of the bank for the period covered by the dividend shall be carried to a surplus fund
174 until the surplus shall amount to 100% of its capital stock.

175 (3) Under this section, any amounts paid into a fund for the retirement of any debenture
176 capital or preferred stock of the bank from its net earnings for the period covered by the
177 dividend shall be considered an addition to its surplus fund if, upon the retirement of the
178 debenture capital or preferred stock, the amount paid into the retirement fund for the period
179 may be properly carried to the surplus fund of the bank. In this case the bank shall be obligated
180 to transfer to the surplus fund the amount paid into the retirement fund.

181 Section 3. Section **7-3-20** is amended to read:

182 **7-3-20. Bank acquiring, holding, or accepting as collateral its own stock.**

183 (1) ~~[(a)]~~ A bank may not accept as collateral or acquire its own stock except when the
 184 taking of the collateral or acquisition of the stock is necessary to prevent loss upon a debt
 185 previously contracted in good faith.

186 ~~[(b)]~~ (2) If a bank acquires stock as permitted under Subsection (1)~~[(a)]~~, the bank shall
 187 sell the stock within 12 months from the date of the bank's acquisition.

188 ~~[(c)]~~ (3) The value of all the stock held after acceptance or acquisition may not exceed
 189 10% of the total capital of the bank.

190 ~~[(2)(a) A bank may not:]~~

191 ~~[(i) make any loan or any extension of credit to any of its affiliates;]~~

192 ~~[(ii) invest any of its funds in the capital stock, bonds, debentures, or other obligations~~
 193 ~~of any affiliate; or]~~

194 ~~[(iii) accept the capital stock, bonds, debentures, or other obligations of any affiliate as~~
 195 ~~collateral security for advances made to any person unless authorized by the commissioner by~~
 196 ~~order.]~~

197 ~~[(b) The exception of Subsection (2)(a)(iii) may not be inconsistent with similar~~
 198 ~~exceptions applicable to national banks under federal law.]~~

199 Section 4. Section 7-3-21 is amended to read:

200 **7-3-21. Stock ownership by banks.**

201 ~~[Any]~~ (1) A bank may purchase, own and hold, and sell or otherwise dispose of~~[-any~~
 202 ~~of the shares of the capital stock of the Federal Deposit Insurance Corporation, the]:~~

203 (a) shares of the Federal Reserve Bank of the Twelfth Federal Reserve District~~[-];~~

204 (b) the stock of ~~[any]~~ a corporation ~~[or corporations]~~ organized under the laws of the
 205 United States for purposes similar to those of the federal reserve banks or the Federal Deposit
 206 Insurance Corporation~~[-];~~

207 (c) shares of the Federal National Mortgage Association~~[-];~~

208 (d) the stock of ~~[any]~~ a safe deposit company~~[-];~~

209 (e) the stock of ~~[any]~~ a corporation owning the banking house in which any place of
 210 business of ~~[such]~~ the bank is located~~[-];~~

211 (f) the stock of ~~[any]~~ a bank service corporation performing services for ~~[such]~~ the
 212 bank~~[-and];~~

213 (g) the stock of ~~[such other]~~ a corporation acquired by ~~[such]~~ the bank in satisfaction of

214 or on account of debts previously contracted in the course of [~~its~~] the bank's business[~~, and~~];

215 (h) the stock of a foreign banking corporation;

216 (i) the stock of a corporation authorized under Title IX of the Housing and Urban
217 Development Act of 1968;

218 (j) the stock of the Government National Mortgage Association authorized under 12
219 U.S.C. Sec. 1716 et seq.;

220 (k) the stock of a charitable foundation;

221 (l) the stock of a community development corporation;

222 (m) the stock of bankers' banks; and

223 (n) the stock of an agricultural credit corporation.

224 (2) A bank may invest in a small business investment [companies] company to the
225 same extent allowed federally chartered banks.

226 (3) Unless expressly authorized by this chapter, a bank may not purchase or own the
227 stock of any other corporation except in a fiduciary capacity.

228 Section 5. Section ~~7-5-7~~ is amended to read:

229 **7-5-7. Management and investment of trust funds.**

230 (1) [~~Funds~~] Money received or held by [~~any~~] a trust company as agent or fiduciary,
231 whether for investment or distribution, shall be invested or distributed as soon as practicable as
232 authorized under the instrument creating the account and may not be held uninvested any
233 longer than is reasonably necessary.

234 (2) If the instrument creating an agency or fiduciary account contains provisions
235 authorizing the trust company, its officers, or its directors to exercise their discretion in the
236 matter of investments, [~~funds~~] money held in the trust account under that instrument may be
237 invested only in those classes of securities which are approved by the directors of the trust
238 company or a committee of directors appointed for that purpose. If a trust company acts in any
239 agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall
240 make and account for [~~all~~] the investments according to [~~the provisions of~~] Title 75, Utah
241 Uniform Probate Code, unless the underlying instrument provides otherwise.

242 (3) (a) [~~Funds~~] Money received or held as agent or fiduciary by any trust company
243 which is also a depository institution, whether for investment or distribution, may be deposited
244 in the commercial department or savings department of that trust company to the credit of its

245 trust department. Whenever the ~~[funds]~~ money so deposited in a fiduciary or managing agency
246 account exceed the amount of federal deposit insurance applicable to that account, the trust
247 company shall deliver to the trust department or put under its control collateral security as
248 outlined in Regulation 9.10 of the Comptroller of the Currency ~~[or in Regulation 550.8 of the~~
249 ~~Office of Thrift Supervision, as amended]~~. However, if the instrument creating such a
250 fiduciary or managing agency account expressly provides that ~~[funds]~~ money may be deposited
251 to the commercial or savings department of the trust company, then the ~~[funds]~~ money may be
252 so deposited without setting aside collateral securities as required under this section and the
253 deposits in the event of insolvency of any such trust company shall be treated as other general
254 deposits are treated. A trust company ~~[which]~~ that deposits trust funds in its commercial or
255 savings department shall be liable for interest on the deposits only at the rates, if any, paid by
256 the trust company on deposits of like kind not made to the credit of its trust department.

257 (b) ~~[Funds]~~ Money received or held as agent or fiduciary by a trust company, whether
258 for investment or distribution, may be deposited in an affiliated depository institution.
259 Whenever the ~~[funds]~~ money so deposited in a fiduciary or managing agency account exceed
260 the amount of federal deposit insurance applicable to that account, the depository institution
261 shall deliver to the trust company or put under its control collateral security as outlined in
262 Regulation 9.10 of the Comptroller of the Currency ~~[or in Regulation 550.8 of the Office of~~
263 ~~Thrift Supervision as amended]~~. However, if the instrument creating the fiduciary or managing
264 agency account expressly permits ~~[funds]~~ money to be deposited in the affiliated depository
265 institution, the ~~[funds]~~ money may be so deposited without setting aside collateral securities as
266 required under this section and deposits in the event of insolvency of the depository institution
267 shall be treated as other general deposits are treated. A trust company ~~[which]~~ that deposits
268 trust ~~[funds]~~ money in an affiliated depository institution is liable for interest on the deposits
269 only at the rates, if any, paid by the depository institution on deposits of like kind.

270 (4) In carrying out all aspects of its trust business, a trust company shall have all the
271 powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to
272 trustees, whether or not the trust company is acting as a trustee as defined in Title 75, Utah
273 Uniform Probate Code.

274 (5) Nothing in this section may alter, amend, or limit the powers of a trust company
275 acting in a fiduciary capacity as specified in the particular instrument or order creating the

276 fiduciary relationship.

277 Section 6. Section **7-8-11** is amended to read:

278 **7-8-11. Dividends.**

279 (1) The board of directors of an industrial bank may declare a dividend out of the net
280 profits of the industrial bank after providing for all expenses, losses, interest, and taxes accrued
281 or due from the industrial bank in accordance with this section [~~and subject to Section 7-8-12~~].

282 (2) The industrial bank shall transfer to a surplus fund at least 10% of its net profits
283 before dividends for the period covered by the dividend, until the surplus reaches 100% of its
284 capital stock.

285 (3) Any amount paid from the industrial bank's net earnings into a fund for the
286 retirement of any debenture capital or preferred stock for the period covered by the dividend is
287 considered an addition to its surplus fund if, upon the retirement of the debenture capital or
288 preferred stock, the amount paid into the retirement fund for the period may be properly carried
289 to the surplus fund of the industrial bank. In this case the industrial bank shall transfer to the
290 surplus fund the amount paid into the retirement fund.

291 Section 7. Section **7-9-20** is amended to read:

292 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

293 (1) At annual meetings the members shall elect from their number a board of directors
294 consisting of an odd number of not less than five members.

295 (2) The bylaws may provide balloting by:

296 (a) mail;

297 (b) ballot box; or

298 (c) both mail and ballot box.

299 (3) Voting may not be by proxy.

300 (4) A member of the board of directors shall hold office for the term prescribed in the
301 bylaws.

302 (5) The board of directors shall meet at least monthly.

303 (6) The board of directors shall have the general management of the affairs, funds, and
304 records of the credit union. In particular, the board of directors shall:

305 (a) act upon an application for membership;

306 (b) act upon expulsion of a member;

- 307 (c) fix the amount of surety bond required of each officer or employee having custody
308 of funds;
- 309 (d) determine the rate of interest or dividend allowed on shares and deposits;
- 310 (e) determine the terms and conditions of credit granted to members;
- 311 (f) lend money, borrow money, and pledge security for any borrowing;
- 312 (g) fill a vacancy in the board of directors or in the credit committee, if applicable, or in
313 the supervisory committee until the election and qualification of a person to fill the vacancy;
- 314 (h) appoint up to two alternate directors as provided in the bylaws;
- 315 (i) fix the amount of the entrance fee;
- 316 (j) declare dividends and their amount;
- 317 (k) make recommendations to meetings of the members relative to amendments to the
318 articles of incorporation, and transact any other business of the credit union; and
- 319 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
320 any one member, up to the limitations described in Subsections (7) and (8).
- 321 (7) (a) The credit that may be outstanding or available by a credit union at any one time
322 is subject to the limitations described in this Subsection (7):
- 323 (i) except as provided in Subsection (8); and
- 324 (ii) except that the board of directors may:
- 325 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(A)(II); or
- 326 (B) require that a person described in Subsection (7)(b)(ii)(A)(I) be a member of the
327 credit union for more than six months before the date a member-business loan is extended.
- 328 (b) (i) A credit union may not extend credit that is not a member-business loan to a
329 member if as a result of that extension of credit the total credit that is not a member-business
330 loan that the credit union has issued to that member exceeds at any one time:
- 331 (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:
- 332 (I) \$1,000; or
- 333 (II) 15% of capital and surplus up to a total of \$25,000; or
- 334 (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:
- 335 (I) \$25,000;
- 336 (II) 4% of capital and surplus; or
- 337 (III) 25% of the regular reserve.

338 (ii) (A) Beginning March 24, 1999, a credit union may not extend a member-business
339 loan to a person:

340 (I) if the credit union is a successor to or was a credit union described in Subsection
341 7-9-53(2)(~~(d)~~)(c) as of May 3, 1999:

342 (Aa) if the person is a business entity, unless at least one individual having a
343 controlling interest in that business entity has been a member of the credit union for at least six
344 months prior to the date of the extension of the member-business loan; or

345 (Bb) if the person is an individual, unless the individual is a member of the credit
346 union for at least six months prior to the date of the extension of the member-business loan; or

347 (II) if as a result of the extension of the member-business loan, the total amount
348 outstanding for all member-business loans that the credit union has extended to that person at
349 any one time exceeds the lesser of:

350 (Aa) 10% of the credit union's capital and surplus; or

351 (Bb) \$250,000 adjusted as provided in Subsection (7)(b)(ii)(B).

352 (B) The adjustment described in Subsection (7)(b)(ii)(A)(II)(Bb) shall be calculated by
353 the commissioner as follows:

354 (I) beginning May 5, 2008 with the adjustment for calendar year 2008 and for a
355 calendar year beginning on or after January 1, 2009, the commissioner shall increase the dollar
356 amount in Subsection (7)(b)(ii)(A)(II)(Bb) by a percentage equal to the percentage difference
357 between the consumer price index for the preceding calendar year and the consumer price
358 index for calendar year 2006;

359 (II) after the commissioner increases the dollar amount listed in Subsection
360 (7)(b)(ii)(B)(I), the commissioner shall round the dollar amount to the nearest whole dollar;

361 (III) if the percentage difference under Subsection (7)(b)(ii)(B)(I) is zero or a negative
362 percentage, the consumer price index increase for the year is zero; and

363 (IV) for purposes of this Subsection (7)(b)(ii)(B), the commissioner shall calculate the
364 consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

365 (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business
366 loan if as a result of that member-business loan the credit union's aggregate member-business
367 loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum
368 of:

- 369 (A) the actual undivided earnings; and
370 (B) the actual reserves other than the regular reserves.
- 371 (ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount
372 of a credit union equals:
- 373 (A) the sum of the total amount financed under all member-business loans outstanding
374 at the credit union; minus
- 375 (B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):
- 376 (I) that is secured by share or deposit savings in the credit union; or
377 (II) for which the repayment is insured or guaranteed by, or there is an advance
378 commitment to purchase by an agency of the federal government, a state, or a political
379 subdivision of the state.
- 380 (d) (i) A credit union service organization may extend credit to a member of a credit
381 union holding an ownership interest in the credit union service organization only if the credit
382 union in which the person is a member is not prohibited from extending that credit to that
383 member under:
- 384 (A) this Subsection (7) and Subsection (8); or
385 (B) Section 7-9-58.
- 386 (ii) For purposes of determining whether under this Subsection (7) and Subsection (8) a
387 credit union may extend credit, the total amount outstanding of credit extended by a credit
388 union service organization to a person shall be treated as if the credit was extended by the
389 credit union in which the person is a member.
- 390 (iii) If a person seeking an extension of credit from a credit union service organization
391 is a member of more than one credit union holding an ownership interest in the credit union
392 service organization, the person shall specify the credit union to which the extension of credit
393 is attributed under Subsection (7)(d)(ii).
- 394 (iv) This Subsection (7)(d) effects only an extension of credit:
- 395 (A) that is extended on or after May 5, 2003; and
396 (B) by:
- 397 (I) a credit union service organization; or
398 (II) a credit union organized under this chapter.
- 399 (e) Notwithstanding the other provisions of this section, a nonexempt credit union may

400 not extend credit that the nonexempt credit union is prohibited from extending under Section
401 7-9-58.

402 (8) (a) A credit union may extend credit that is not a member-business loan in an
403 amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is
404 fully secured by share or deposit savings in the credit union.

405 (b) (i) Except as provided in Subsection (8)(b)(ii), a credit union may extend a
406 member-business loan in an amount that exceeds the limits described in Subsection
407 (7)(b)(ii)(A)(II) only if:

408 (A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(A)(II)
409 is secured by share or deposit savings in the credit union; or

410 (B) the repayment of that portion that is in excess of the limits described in Subsection
411 (7)(b)(ii)(A)(II) is insured or guaranteed by, or there is an advance commitment to purchase
412 that excess portion by, an agency of:

413 (I) the federal government;

414 (II) a state; or

415 (III) a political subdivision of the state.

416 (ii) Notwithstanding Subsection (8)(b)(i), a credit union may not extend a
417 member-business loan if the total amount financed by the credit union exceeds \$1,000,000.

418 (c) For a member-business loan that is extended through a loan participation
419 arrangement in accordance with Subsection 7-9-5(12):

420 (i) in applying the limitation of Subsection (8)(b), each credit union participating in the
421 member-business loan may extend up to \$1,000,000 of the amount financed; and

422 (ii) the requirement of Subsection (7)(b)(ii)(A)(I) applies to membership in a credit
423 union that:

424 (A) participates in the loan participation arrangement for the member-business loan;

425 (B) is organized under this chapter; and

426 (C) is a successor to or was a credit union described in Subsection 7-9-53(2)~~[(d)]~~[(c)] as
427 of May 3, 1999.

428 (9) As provided in this chapter or in the credit union bylaws, the board of directors:

429 (a) within 30 days following the annual meeting of the members, shall appoint a
430 supervisory committee consisting of not less than three members;

- 431 (b) within 30 days after the annual meeting of the members, shall appoint:
432 (i) a credit committee consisting of not less than three members; or
433 (ii) a credit manager in lieu of a credit committee;
434 (c) shall appoint a president to serve as general manager;
435 (d) shall have an executive committee;
436 (e) may appoint an investment officer;
437 (f) shall elect a secretary;
438 (g) may appoint other officers and committees that it considers necessary;
439 (h) shall establish written credit policies, loan security requirements, loan investment,
440 personnel, and collection policies; and
441 (i) on or before January 31 of each year, shall provide for:
442 (i) share insurance for the shares and deposits of the credit union from the National
443 Credit Union Administration or successor federal agency; or
444 (ii) security expressly pledged for the payment of the shares and deposits in accordance
445 with Section 7-9-45.
- 446 (10) A person may not be a member of more than one committee except as otherwise
447 provided in this chapter or in the credit union bylaws.
- 448 (11) The president and secretary may not be the same person.
- 449 Section 8. Section 7-9-36 is amended to read:
- 450 **7-9-36. Dissolution.**
- 451 (1) A credit union may be dissolved upon a majority vote of the entire membership.
- 452 (2) A copy of a notice of a special meeting to consider the matter shall be mailed to the
453 members of the credit union at least 10 days before the date of the meeting.
- 454 (3) Any member not present at the meeting may within the following 20 days vote for
455 or against dissolution by signing a statement approved by the commissioner. A vote cast in this
456 manner has the same force and effect as if cast at the meeting. A member not voting within
457 the 20-day period is considered to be in favor of the dissolution.
- 458 (4) The officers of the credit union may appoint a liquidating agent, subject to the
459 approval of the commissioner, who has the right to exercise all the powers of the dissolved
460 credit union to wind up its affairs. If the liquidating agent is other than [~~the Utah League of~~
461 ~~Credit Unions~~] an association in this state that represents credit unions, or the National Credit

462 Union Administration, the liquidator shall provide a bond or other security, as required by the
463 commissioner, for the faithful discharge of duties in connection with the liquidation, including
464 accounting for all money collected.

465 (5) Upon the vote required under this section, a certificate of dissolution, signed by the
466 chair of the board and the secretary, shall be filed with the commissioner and shall state the
467 vote cast in favor of dissolution, the proposed date upon which the credit union will cease to do
468 business, the names and addresses of the directors and officers of the credit union and the name
469 and address of the liquidating agent appointed by the officers of the credit union. The
470 commissioner shall approve the dissolution unless he finds that the procedures set forth in this
471 section have not been properly followed.

472 (6) Upon approval, the credit union shall cease to do business except for the purpose of
473 discharging its debts, collecting and distributing assets, and doing all acts required to adjust,
474 wind up, and dissolve its business and affairs. It may sue and be sued for the purpose of
475 enforcing debts or obligations until its affairs are fully adjusted.

476 (7) If the board or the liquidating agent determines that all assets from which a
477 reasonable return could be expected have been liquidated and distributed, it shall execute a
478 certificate of dissolution in a form approved by the commissioner and file it with the
479 department and the Division of Corporations and Commercial Code. After the certificate has
480 been filed, the credit union is dissolved.

481 Section 9. Section ~~7-9-39~~ is amended to read:

482 **7-9-39. Voluntary merger.**

483 (1) ~~[Any]~~ A credit union may merge with another credit union under the existing
484 charter of the other credit union when all of the following have occurred:

485 (a) the majority of the directors of each merging credit union votes in favor of the
486 merger plan;

487 (b) the commissioner approves the merger plan;

488 (c) subject to Subsection (7):

489 ~~[(c)]~~ (i) the majority of the members of each merging credit union present at a meeting
490 called for the purpose of considering the merger plan votes to approve the merger plan~~[-but a~~
491 ~~vote of the membership of the surviving credit union is not required if its board of directors~~
492 ~~determines that the merger will not have any significant effect on the organization,~~

493 ~~membership, or financial condition of the credit union; and]; or~~

494 (ii) the majority of the members of each merging credit union votes to approve the
495 merger plan by means of United States Postal Service mail; and

496 (d) (i) the National Credit Union Administration or its successor federal deposit
497 insurance agency approves the merger plan and commits to insure deposits of the surviving
498 credit union; or

499 (ii) the commissioner approves the surviving credit union to operate without federal
500 deposit insurance in accordance with Section 7-9-45.

501 (2) Upon merger, the chair of the board and secretary of each credit union shall
502 execute, and file with the department, a certificate of merger setting forth:

503 (a) the time and place of the meeting of the board of directors at which the plan was
504 approved;

505 (b) the vote by which the directors approved the plan;

506 (c) a copy of the resolution or other action by which the plan was approved;

507 (d) the time and place of the meeting of the members at which the plan was approved;

508 (e) the vote by which the members approved the plan; and

509 (f) the effective date of the merger, which shall be:

510 (i) the date on which the last approval or vote required under Subsection (1) was
511 obtained; or

512 (ii) a later date specified in the merger plan.

513 (3) On the effective date of ~~[any]~~ a merger:

514 (a) ~~[all]~~ the property, property rights, and interests of the merged credit union shall vest
515 in the surviving credit union without deed, endorsement, or other instrument of transfer; and

516 (b) ~~[all]~~ the debts, obligations, and liabilities of the merged credit union are considered
517 to have been assumed by the surviving credit union.

518 (4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered
519 under this chapter, the residents of a county in the field of membership of the merging credit
520 union may not be added to the field of membership of the surviving credit union, except that
521 the surviving credit union:

522 (a) may admit as a member any member of the merging credit union that is not in the
523 field of membership of the surviving credit union if the member of the merging credit union

524 was a member of that credit union at the time of merger; and

525 (b) may service any member-business loan of the merging credit union until the
526 member-business loan is paid in full.

527 (5) (a) This section shall be interpreted, whenever possible, to permit a credit union
528 chartered under this chapter to merge with a credit union chartered under any other law if the
529 preservation of membership interest is concerned.

530 (b) The commissioner may under Subsection (1)(b) approve a merger plan that
531 includes the addition of the residents of a county in the field of membership of the merging
532 credit union to the field of membership of the surviving credit union if the commissioner finds
533 that:

534 (i) the expansion of the field of membership of the surviving credit union is necessary
535 for that credit union's safety and soundness; and

536 (ii) the expanded field of membership of the surviving credit union meets the criteria
537 stated in Subsection 7-9-52(3)(c).

538 (6) If the commissioner approves a merger plan under Subsection (5)(b) under which
539 the surviving credit union's field of membership after the merger will include residents of more
540 than one county, Subsections (6)(a) through (e) apply to the surviving credit union.

541 (a) The domicile-county of the surviving credit union is:

542 (i) if the credit union does not have a field of membership under Subsection
543 7-9-53(2)(c) [~~or (2)(d)~~], the county in which the credit union has located the greatest number of
544 branches as of the date the merger is effective; or

545 (ii) if the credit union has a field of membership under Subsection 7-9-53(2)(c) [~~or~~
546 ~~(2)(d)~~], the county that is the domicile-county of the surviving credit union under Section
547 7-9-53;

548 (b) Within the surviving credit union's domicile-county, the surviving credit union may
549 establish, relocate, or otherwise change the physical location of the credit union's:

550 (i) main office; or

551 (ii) branch.

552 (c) Within a county other than the domicile-county that is in the field of membership of
553 the surviving credit union after the merger, the surviving credit union may not:

554 (i) establish a main office or branch if the main office or branch was not located in the

555 county as of the date that the merger is effective;

556 (ii) participate in a service center in which it does not participate as of the date that the
557 merger is effective; or

558 (iii) relocate the surviving credit union's main office or a branch located in the county
559 as of the date that the merger is effective unless the commissioner finds that the main office or
560 branch is being relocated within a three-mile radius of the original location of the main office
561 or branch.

562 (d) After the merger, the surviving credit union may admit as a member:

563 (i) a person in the surviving credit union's field of membership after the date that the
564 merger is effective; or

565 (ii) a person belonging to an association that:

566 (A) is added to the field of membership of the credit union; and

567 (B) resides in the domicile-county of the surviving credit union, as defined in Section
568 [7-9-53](#).

569 (e) In addition to any requirement under this Subsection (6), a surviving credit union
570 shall comply with any requirement under this title for the establishment, relocation, or change
571 in the physical location of a main office or branch of a credit union.

572 (7) A vote of the membership of the surviving credit union is not required under
573 Subsection (1)(c) if its board of directors determines that the merger will not have a significant
574 effect on the organization, membership, or financial condition of the credit union.

575 Section 10. Section ~~7-9-43~~ is amended to read:

576 **7-9-43. Board of Credit Union Advisors.**

577 (1) (a) There is created a Board of Credit Union Advisors of five members to be
578 appointed by the governor.

579 ~~[(+)]~~ (b) Members of the advisory board shall be individuals who are familiar with and
580 associated in the field of credit unions.

581 ~~[(2)]~~ (c) At least three of the members of the advisory board shall be persons who have
582 had three or more years of experience as a credit union officer and shall be selected from a list
583 submitted to the governor by ~~[the Utah League of Credit Unions]~~ an association in this state
584 that represents credit unions.

585 ~~[(3)]~~ (2) The advisory board shall meet quarterly.

586 ~~[(4)]~~ (3) A chair of the advisory board shall be chosen each year from the membership
587 of the advisory board by a majority of the members present at the advisory board's first meeting
588 each year.

589 ~~[(5)]~~ (4) (a) Except as required by Subsection ~~[(5)]~~ (4)(b), as terms of current board
590 members expire, the governor shall appoint each new member or reappointed member to a
591 four-year term.

592 (b) Notwithstanding ~~[the requirements of]~~ Subsection ~~[(5)]~~ (4)(a), the governor shall, at
593 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
594 board members are staggered so that approximately half of the advisory board is appointed
595 every two years.

596 ~~[(6)]~~ (5) When a vacancy occurs in the membership for any reason, the ~~[replacement~~
597 ~~shall be appointed]~~ governor shall appoint a replacement for the unexpired term.

598 ~~[(7) All members]~~ (6) A member shall serve until [their successors are] the member's
599 successor is appointed and qualified.

600 ~~[(8)]~~ (7) A member may not receive compensation or benefits for the member's service,
601 but may receive per diem and travel expenses in accordance with:

602 (a) Section [63A-3-106](#);

603 (b) Section [63A-3-107](#); and

604 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
605 [63A-3-107](#).

606 ~~[(9)]~~ (8) Meetings of the advisory board shall be held on the call of the chair. A
607 majority of the members of the advisory board shall constitute a quorum.

608 ~~[(10)]~~ (9) The ~~[Board of Credit Union Advisors]~~ advisory board has the duty to advise
609 the governor and commissioner on problems relating to credit unions and to foster the interest
610 and cooperation of credit unions in the improvement of their services to the people of the state.

611 Section 11. Section **7-9-44** is amended to read:

612 **7-9-44. Corporate central credit union.**

613 (1) A credit union in which all credit unions, ~~[the Utah League of Credit Unions]~~ an
614 association in this state that represents credit unions, and its affiliates are eligible for
615 membership may be established in this state and shall be known as a corporate central credit
616 union.

617 (2) The corporate central credit union has all the powers and rights granted credit
618 unions established under this chapter. The maximum loan by a corporate central credit union
619 shall be established in the corporate central credit union bylaws.

620 (3) Beginning January 1, 1984, and at the end of each dividend period, the corporate
621 central credit union, in lieu of a regular reserve as provided in Section 7-9-30, shall transfer 2%
622 of its gross earnings to its central reserve until the reserve equals 1-1/2% of total assets. If the
623 central reserve falls below 1-1/2% of total assets, it shall be replenished by regular transfers of
624 2% of gross earnings or by contributions, whichever is less, in such amounts as are needed to
625 maintain the central reserve at 1-1/2% of total assets.

626 (4) Charges may be made against the central reserve to the extent permitted against a
627 regular reserve. No other charges may be made against the central reserve, except as
628 authorized in writing by the commissioner.

629 (5) The purposes of the corporate central credit union are:

630 (a) to accumulate and prudently manage the liquidity of its member credit unions
631 through interlending and investment services;

632 (b) to act as an intermediary for credit union funds between members, other corporate
633 credit unions, other financial institutions, and government agencies;

634 (c) to obtain liquid funds from other credit union organizations, financial
635 intermediaries, and other sources;

636 (d) to foster and promote, in cooperation with other state, regional, and national
637 corporate credit unions and credit union organizations or associations, the economic security,
638 growth, and development of member credit unions; and

639 (e) to perform other financial services of benefit to its members authorized by the
640 commissioner.

641 (6) The corporate central credit union is exempt from supervision fees but is subject to
642 examination fees.

643 Section 12. Section 7-9-51 is amended to read:

644 **7-9-51. Field of membership.**

645 (1) Except as provided in Subsection (3) or (5), the field of membership of a credit
646 union may include only the following:

647 (a) the immediate family of a member of the credit union;

- 648 (b) the employees of the credit union;
- 649 (c) residents of a single county;
- 650 (d) one or more associations; and
- 651 (e) residents of a city of the third, fourth, or fifth class or a town as classified in Section

652 10-2-301 if:

653 (i) the city or town is located in a county of the fourth through sixth class as classified
654 in Section 17-50-501;

655 (ii) at the time the residents of the city or town are included in the field of membership
656 of a credit union, the credit union has not become a nonexempt credit union under Section
657 7-9-55; and

658 (iii) approved by the commissioner in accordance with Subsection 7-9-52(6).

659 (2) A credit union may have a field of membership that is more restrictive than the
660 field of membership described in Subsection (1).

661 (3) A credit union may have a field of membership that is less restrictive than the field
662 of membership described in Subsection (1) if the field of membership of the credit union:

663 (a) is determined under Subsection 7-9-53(2)(c) [~~or (2)(d)~~];

664 (b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or

665 (c) is permitted by the commissioner after a merger in accordance with Section
666 7-9-39.5.

667 (4) If a credit union includes the residents of one county in its field of membership, the
668 credit union may not change its field of membership to include a different county than the
669 county that is first included in the field of membership of the credit union.

670 (5) Notwithstanding the other provisions of this section or any restrictions of Section
671 7-9-53, a credit union may have a field of membership that is less restrictive than the field of
672 membership described in Subsection (1), under the following conditions:

673 (a) the field of membership of the credit union may include no more than all the
674 residents of two counties in addition to any association included in the field of membership of
675 the credit union; and

676 (b) both counties described in Subsection (5)(a) must be a county of the third through
677 sixth class, as classified in Section 17-50-501.

678 Section 13. Section 7-9-53 is amended to read:

679 **7-9-53. Grandfathering.**

680 (1) As used in this section:

681 (a) "Association that resides in a domicile-county" means an association that:

682 (i) operates a place of business or other physical location in the domicile-county; or

683 (ii) has at least 100 members that are residents of the domicile-county.

684 (b) "Domicile-county" means the county:

685 (i) in the field of membership of the credit union as of January 1, 1999; and

686 (ii) in which the credit union has located the greatest number of branches as of January

687 1, 1999.

688 (c) "Grandfathered field of membership" means the field of membership as of May 3,

689 1999, of a credit union described in Subsection (2)~~(d)~~(c).

690 (2) For each credit union formed before January 1, 1999, its field of membership as of

691 May 3, 1999, is determined as follows:

692 (a) if the field of membership stated in the bylaws of the credit union as of January 1,

693 1999, complies with Section 7-9-51, the credit union's field of membership is the field of

694 membership indicated in its bylaws;

695 (b) (i) the field of membership of a credit union as of May 3, 1999, is as provided in

696 Subsection (2)(b)(ii) if:

697 (A) the field of membership stated in the bylaws of the credit union as of January 1,

698 1999, includes the residents of more than one county; and

699 (B) as of January 1, 1999, the credit union's main office and any of its branches are

700 located in only one county in its field of membership;

701 (ii) as of May 3, 1999, the field of membership of a credit union described in

702 Subsection (2)(b)(i) is:

703 (A) the immediate family of a member of the credit union;

704 (B) the employees of the credit union;

705 (C) residents of the one county in which the credit union has its main office or

706 branches as of January 1, 1999; and

707 (D) any association that as of January 1, 1999, is in the field of membership of the

708 credit union; and709 ~~[(c) (i) the field of membership of a credit union as of May 3, 1999, is as provided in~~

710 Subsection (2)(c)(ii) if:]

711 [~~(A) the field of membership of a credit union stated in the bylaws of the credit union~~
712 ~~as of January 1, 1999, includes residents of more than one county;]~~

713 [~~(B) as of January 1, 1999, the credit union has a main office or branch in more than~~
714 ~~one county; and]~~

715 [~~(C) as a result of a merger pursuant to a supervisory action under Chapter 2,~~
716 ~~Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing~~
717 ~~Depository Institutions or Holding Companies, that is effective on or after January 1, 1983, but~~
718 ~~before January 1, 1994, the credit union acquired a branch in a county in the field of~~
719 ~~membership of the credit union and the credit union did not have a branch in the county before~~
720 ~~the merger;]~~

721 [~~(ii) as of May 3, 1999, the field of membership of a credit union described in~~
722 ~~Subsection (2)(c)(i) is the same field of membership that the credit union would have had~~
723 ~~under Subsection (2)(d) except that the credit union:]~~

724 [~~(A) is not subject to Subsection (3); and]~~

725 [~~(B) is subject to Subsection (4)(b); and]~~

726 [~~(d)~~ (c) (i) the field of membership of a credit union as of May 3, 1999, is as provided
727 in Subsection (2)[~~(d)~~](c)(ii) if:

728 (A) the field of membership stated in the bylaws of the credit union as of January 1,
729 1999, includes the residents of more than one county; and

730 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
731 county;

732 (ii) as of May 3, 1999, the field of membership of a credit union described in
733 Subsection (2)[~~(d)~~](c)(i) is:

734 (A) the immediate family of a member of the credit union;

735 (B) the employees of the credit union;

736 (C) residents of the credit union's domicile-county;

737 (D) the residents of any county other than the domicile-county:

738 (I) if, as of January 1, 1999, the county is in the field of membership of the credit
739 union; and

740 (II) in which, as of January 1, 1994, the credit union had located its main office or a

741 branch; and

742 (E) any association that as of January 1, 1999, is in the field of membership of the
743 credit union.

744 (3) If a credit union's field of membership is as described in Subsection (2)[~~(d)~~](c),
745 beginning May 3, 1999, the credit union:

746 (a) within the credit union's domicile-county, may establish, relocate, or otherwise
747 change the physical location of the credit union's:

748 (i) main office; or

749 (ii) branch;

750 (b) within a county other than a domicile-county that is in the credit union's
751 grandfathered field of membership, may not:

752 (i) establish a main office or branch that:

753 (A) was not located in the county as of January 1, 1999; or

754 (B) for which the credit union has not received by January 1, 1999, approval or
755 conditional approval of a site plan for the main office or branch from the planning commission
756 of the municipality where the main office or branch will be located;

757 (ii) participate in a service center in which it does not participate as of January 1, 1999;

758 (iii) relocate the credit union's main office or a branch located in the county as of
759 January 1, 1999, unless the commissioner finds that the main office or branch is relocated
760 within a three-mile radius of where it was originally located; or

761 (iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:

762 (A) the effective date of the merger is on or after May 5, 2003;

763 (B) the credit union with the field of membership described in Subsection (2)[~~(d)~~](c) is
764 the surviving credit union after the merger; and

765 (C) the credit union did not own and operate the branch before the effective date of the
766 merger; and

767 (c) may only admit as a member:

768 (i) a person in the credit union's grandfathered field of membership; or

769 (ii) a person belonging to an association that:

770 (A) is added to the field of membership of the credit union; and

771 (B) resides in the domicile-county of the credit union.

772 (4) ~~[(a)]~~ If a credit union's field of membership is as described in Subsection (2)(b), as
773 of May 3, 1999, the credit union may operate as a credit union having a field of membership
774 under Section 7-9-51.

775 ~~[(b) If a credit union's field of membership is as described in Subsection (2)(c), as of
776 May 3, 1999, the credit union:]~~

777 ~~[(i) within the credit union's domicile-county, may establish, relocate, or otherwise
778 change the physical location of the credit union's:]~~

779 ~~[(A) main office; or]~~

780 ~~[(B) branch;]~~

781 ~~[(ii) within a county other than its domicile-county that is in the credit union's field of
782 membership under Subsection (2)(c), may not:]~~

783 ~~[(A) establish a main office or branch that was not located in the county as of January
784 1, 1999;]~~

785 ~~[(B) participate in a service center in which it does not participate as of January 1,
786 1999; or]~~

787 ~~[(C) relocate the credit union's main office or a branch located in the county as of
788 January 1, 1999, unless the commissioner finds that the main office or branch is relocated
789 within a three-mile radius of where it was originally located; and]~~

790 ~~[(iii) may only admit as a member:]~~

791 ~~[(A) a person in the credit union's field of membership under Subsection (2)(c); or]~~

792 ~~[(B) a person belonging to an association that is added to the field of membership of
793 the credit union, regardless of whether the association resides in the domicile-county of the
794 credit union.]~~

795 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union
796 described in Subsection (2)(c) ~~[or(d)]~~ may:

797 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but
798 that is not located in a county that is in the credit union's field of membership as of May 3,
799 1999; and

800 (ii) serve a member who is not in a credit union's field of membership as of May 3,
801 1999, if the member is a member of the credit union as of March 15, 1999.

802 (b) Subsection (5)(a) does not authorize a credit union to:

803 (i) establish a branch in a county that is not in the credit union's field of membership as
804 of May 3, 1999, unless the branch meets the requirements under this title for establishing a
805 branch; or

806 (ii) for a credit union described in Subsection (2)~~(d)~~(c), include in its field of
807 membership an association that:

808 (A) as of January 1, 1999, is not included in the credit union's field of membership; and

809 (B) does not reside within the credit union's domicile-county.

810 (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later
811 than August 3, 1999, to comply with this section.

812 (7) In addition to any requirement under this section, a credit union shall comply with
813 any requirement under this title for the establishment, relocation, or change in the physical
814 location of a main office or branch of a credit union.

815 Section 14. Section **70C-1-202** is amended to read:

816 **70C-1-202. Exempted transactions.**

817 (1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that
818 is otherwise exempt from this title may explicitly agree in writing that the transaction is subject
819 to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code.

820 (2) This title does not apply to any of the following:

821 (a) ~~any~~ an extension of credit:

822 (i) primarily for business, commercial, or agricultural purposes; or

823 (ii) to other than a natural person including government agencies or instrumentalities;

824 (b) ~~any~~ a closed-end extension of credit secured by a first lien or equivalent security
825 interest on a dwelling or building lot;

826 (c) ~~any~~ a transaction in securities or commodities accounts in which credit is
827 extended by a broker-dealer registered with the:

828 (i) Securities and Exchange Commission; or

829 (ii) Commodity Futures Trading Commission;

830 (d) ~~any~~ an extension of credit:

831 (i) not secured by:

832 (A) real property; or

833 (B) personal property used or expected to be used as the principal dwelling of the

834 consumer; and

835 (ii) (A) in which the amount financed exceeds [~~\$25,000~~] \$50,000 adjusted annually for
836 inflation by the commissioner by the annual percentage increase in the Consumer Price Index
837 for Urban Wage Earners and Clerical Workers; or

838 (B) in which there is an express written commitment to extend credit in excess of
839 [~~\$25,000~~] the amount determined under Subsection (2)(d)(ii)(A);

840 (e) [~~any~~] a transaction under public utility or common carrier tariffs if a subdivision of
841 this state or the United States regulates:

842 (i) the charges for the services involved;

843 (ii) the charges for delayed payment; and

844 (iii) [~~any~~] a discount allowed for early payment;

845 (f) [~~any~~] a sale of insurance by an insurer except as otherwise provided in Chapter 6,
846 Insurance;

847 (g) [~~any~~] a transaction with a party acting as a pawnbroker and licensed by any
848 governmental authority in this state;

849 (h) (i) a loan made, insured, or guaranteed pursuant to a program authorized by Title IV
850 of the Higher Education Act of 1965, 20 U.S.C. [~~Sections~~] Sec. 1070, et seq.; or

851 (ii) a loan:

852 (A) that finances tuition and other expenses:

853 (I) charged in connection with enrollment:

854 (Aa) at a public or proprietary preprimary, secondary, vocational, or postsecondary
855 school; or

856 (Bb) in any tutorial, continuing education, test preparation, distance-learning, or similar
857 program; and

858 (II) including:

859 (Aa) tuition;

860 (Bb) fees;

861 (Cc) books;

862 (Dd) housing; and

863 (Ee) other expenses;

864 (B) that is:

865 (I) made, insured, or guaranteed under a state program; or
866 (II) made by a federally insured depository institution; and
867 (C) including a loan that consolidates or refinances a loan described in this Subsection
868 (2)(h)(ii); and

869 (i) a rental purchase agreement as defined in Section 15-8-3.

870 Section 15. Section 70C-8-203 is amended to read:

871 **70C-8-203. Fees -- Examinations.**

872 (1) A party required to file notification under Section 70C-8-202 shall, on or before
873 January 31 of each year, pay to the department an annual fee ~~[equal to the sum of:]~~ of \$100.

874 ~~[(a) \$25; and]~~

875 ~~[(b) \$7 for each \$100,000 or part thereof in excess of \$100,000, of the original~~
876 ~~principal balance of all consumer credit the party extended during the preceding calendar year.]~~

877 (2) In addition to filing notification, a party subject to this part, and a depository
878 institution subject to this title:

879 (a) may be required to make a book or record relating to a consumer credit transaction
880 available to the department or its authorized representative for examination; and

881 (b) shall pay to the department a fee to be set by the department based on an hourly rate
882 per each examiner.

883 (3) No portion of a fee paid or owed to the department under this part is refundable
884 because a party voluntarily or involuntarily ceases to extend credit to consumers:

885 (a) during the period covered by the fee; or

886 (b) before the time of an examination by the department of a book or record pertaining
887 to a preceding consumer credit transaction.

888 Section 16. Section 70D-2-201 is amended to read:

889 **70D-2-201. Notification of department -- Exemptions.**

890 (1) Except as provided in Subsection (2), a person may not engage in business as a
891 lender, broker, or servicer in this state before the day on which the person:

892 (a) files written notification with the commissioner in accordance with Section
893 70D-2-202; and

894 (b) pays a fee required by Section 70D-2-203.

895 (2) The following persons are exempt from this part, except for a reimbursement or fee

896 described in Subsection 70D-2-203(2):

897 (a) a federally insured depository institution [~~in this state~~];

898 (b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a);

899 and

900 (c) a person who:

901 (i) is required to be licensed with the Division of Real Estate pursuant to Title 61,

902 Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

903 (ii) is not a servicer.

904 Section 17. Section 70D-2-203 is amended to read:

905 **70D-2-203. Fees -- Examination.**

906 (1) (a) A person required to file notification under this part shall pay to the
907 commissioner:

908 (i) a fee of \$200 with the person's initial notification; and

909 (ii) an annual fee, on or before January 31 of each year, in an amount to be set by rule
910 of the commissioner subject to Subsection (1)(b).

911 (b) The commissioner:

912 (i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount that
913 generates sufficient revenue to cover the department's costs of administering this chapter; and

914 (ii) may not set an annual renewal fee that exceeds \$100 per renewal.

915 (2) (a) [~~If the commissioner has probable cause to believe that a lender, broker, or
916 servicer has violated this chapter, the~~] The commissioner may require [~~the~~] a lender, broker, or
917 servicer to make a record of the lender, broker, or servicer relating to its activities as a lender,
918 broker, or servicer available to the commissioner or the commissioner's authorized
919 representative for examination.

920 (b) A lender, broker, or servicer described in Subsection (2)(a) shall:

921 (i) reimburse the department for travel and other reasonable and necessary costs
922 incurred in the examination described in Subsection (2)(a); and

923 (ii) pay to the commissioner a fee set by the commissioner based on an hourly rate per
924 each examiner, not to exceed \$55 per hour for each examiner.

925 (3) No portion of a fee paid or owed to the commissioner under this section is
926 refundable because a person voluntarily or involuntarily ceases to do business as a lender,

927 broker, or servicer:

928 (a) during the period covered by the fee; or

929 (b) before the time of an examination by the commissioner of a record pertaining to a
930 transaction preceding the day on which the person ceases to do business as a lender, broker, or
931 servicer.

932 Section 18. Section **70D-2-305** is amended to read:

933 **70D-2-305. Fee restrictions.**

934 (1) A lender or broker may not accept a fee or deposit from an applicant for a mortgage
935 loan unless at the time the lender or broker accepts the fee or deposit there is a written
936 statement:

937 ~~(1)~~ (a) signed by the applicant;

938 ~~(2)~~ (b) stating whether or not the fee or deposit is refundable; and

939 ~~(3)~~ (c) describing the conditions, if any, under which all or a portion of the fee or
940 deposit will be refunded to the applicant.

941 (2) Notwithstanding Subsection (1), a lender or broker may accept a fee or deposit
942 from an applicant for a mortgage loan if the lender or broker receives an email from the
943 applicant acknowledging that the applicant was provided the information required by
944 Subsections (1)(b) and (c).

945 Section 19. Section **70D-3-102** is amended to read:

946 **70D-3-102. Definitions.**

947 As used in this chapter:

948 (1) "Administrative or clerical tasks" means:

949 (a) the receipt, collection, and distribution of information common for the process or
950 underwriting of a loan in the mortgage industry; and

951 (b) a communication with a consumer to obtain information necessary for the
952 processing or underwriting of a residential mortgage loan.

953 (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with
954 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

955 (3) "Applicant" means an individual applying for a license under this chapter.

956 (4) "Approved examination provider" means a person approved by the nationwide
957 database as an approved test provider.

958 (5) "Business as a loan originator" means for compensation or in the expectation of
959 compensation to engage in an act that makes an individual a loan originator.

960 (6) "Clerical or support duties" includes after the receipt of an application for a
961 residential mortgage loan:

962 (a) the receipt, collection, distribution, and analysis of information common for the
963 processing or underwriting of a residential mortgage loan; and

964 (b) communicating with a consumer to obtain the information necessary for the
965 processing or underwriting of the residential mortgage loan, to the extent that the
966 communication does not include:

967 (i) offering or negotiating a residential mortgage loan rate or term; or

968 (ii) counseling a consumer about a residential mortgage loan rate or term.

969 (7) "Compensation" means anything of economic value that is paid, loaned, granted,
970 given, donated, or transferred to an individual or entity for or in consideration of:

971 (a) services;

972 (b) personal or real property; or

973 (c) another thing of value.

974 (8) "Continuing education" means education taken by an individual licensed under this
975 chapter in order to meet the education requirements imposed by Section [70D-3-303](#) to renew a
976 license under this chapter.

977 (9) "Covered subsidiary" means a subsidiary that is:

978 (a) owned and controlled by a depository institution; and

979 (b) regulated by a federal banking agency.

980 (10) "Federal banking agency" means:

981 (a) the Board of Governors of the Federal Reserve System;

982 (b) the Comptroller of the Currency;

983 [~~(c) the Director of the Office of Thrift Supervision;~~]

984 [~~(d)~~] (c) the National Credit Union Administration; or

985 [~~(e)~~] (d) the Federal Deposit Insurance Corporation.

986 (11) "Licensee" means an individual licensed under this chapter.

987 (12) (a) Except as provided in Subsection (12)(b), "loan originator" means an
988 individual who for compensation or in the expectation of compensation:

- 989 (i) takes a residential mortgage loan application; or
990 (ii) offers or negotiates a term of a residential mortgage loan.
- 991 (b) "Loan originator" does not include:
992 (i) an individual who is engaged solely as a loan processor or underwriter;
993 (ii) unless compensated by a lender, broker, other loan originator, or an agent of a
994 lender, broker, or other loan originator, a person who:
995 (A) only performs real estate brokerage activities; and
996 (B) is licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
997 (iii) a person who is solely involved in extension of credit relating to a timeshare plan,
998 as defined in 11 U.S.C. Sec. 101(53D); or
999 (iv) an attorney licensed to practice law in this state who, in the course of the attorney's
1000 practice as an attorney, assists a person in obtaining a residential mortgage loan.
- 1001 (13) "Loan processor or underwriter" means an individual who as an employee
1002 performs clerical or support duties:
1003 (a) at the direction of and subject to the supervision and instruction of:
1004 (i) a licensee; or
1005 (ii) a registered loan originator; and
1006 (b) as an employee of:
1007 (i) the licensee; or
1008 (ii) a registered loan originator.
- 1009 (14) "Nationwide database" means the Nationwide Mortgage Licensing System and
1010 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.
1011 Sec. 5101 et seq.
- 1012 (15) "Nontraditional mortgage product" means a mortgage product other than a 30-year
1013 fixed rate mortgage.
- 1014 (16) "Owned and controlled by a depository institution" may be defined by rule made
1015 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
1016 Rulemaking Act.
- 1017 (17) "Prelicensing education" means education taken by an individual seeking to be
1018 licensed under this chapter in order to meet the education requirements imposed by Section
1019 [70D-3-301](#) for an individual to obtain a license under this chapter.

- 1020 (18) "Registered loan originator" means an individual who:
- 1021 (a) engages in an act as a loan originator only as an employee of:
- 1022 (i) a depository institution;
- 1023 (ii) a covered subsidiary; or
- 1024 (iii) an institution regulated by the Farm Credit Administration; and
- 1025 (b) is registered with, and maintains a unique identifier through, the nationwide
- 1026 database.
- 1027 (19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:
- 1028 (i) a mortgage loan; or
- 1029 (ii) a loan that is:
- 1030 (A) secured by a mortgage; and
- 1031 (B) subject to Title 70C, Utah Consumer Credit Code.
- 1032 (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the
- 1033 mortgage securing the loan is on:
- 1034 (i) a dwelling located in the state; or
- 1035 (ii) real property located in the state, upon which is constructed or intended to be
- 1036 constructed a dwelling.
- 1037 (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.
- 1038 **Section 20. Repealer.**
- 1039 This bill repeals:
- 1040 Section **7-3-3.3, Tying of other bank services prohibited.**
- 1041 Section **7-3-16, Losses charged to surplus -- Replenishment of fund -- Dividend**
- 1042 **restrictions.**
- 1043 Section **7-8-12, Charge off of losses sustained on receivables and operating losses --**
- 1044 **Replenishment of surplus account.**

Legislative Review Note
as of 1-13-14 5:22 PM

Office of Legislative Research and General Counsel