

1 DEPARTMENT OF FINANCIAL INSTITUTIONS

2 RELATED AMENDMENTS

3 2017 GENERAL SESSION

4 STATE OF UTAH

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6 LONG TITLE

7 General Description:

8 This bill amends provisions related to financial institutions under the jurisdiction of the  
9 department.

10 Highlighted Provisions:

11 This bill:

- 12 ▶ modifies definitions;
- 13 ▶ permits the delegation of powers and duties under certain circumstances;
- 14 ▶ changes the supervisor of trust to the supervisor of holding companies;
- 15 ▶ modifies restrictions on acquisition of institutions and holding companies; and
- 16 ▶ makes technical changes.

17 Money Appropriated in this Bill:

18 None

19 Other Special Clauses:

20 None

21 Utah Code Sections Affected:

22 AMENDS:

23 7-1-103, as last amended by Laws of Utah 2016, Chapter 288

24 7-1-201, as last amended by Laws of Utah 2013, Chapter 73

25 7-1-208.1, as enacted by Laws of Utah 1989, Chapter 267

26 7-1-209, as last amended by Laws of Utah 1994, Chapter 200

27 7-1-703, as last amended by Laws of Utah 2014, Chapter 189

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

30 Section 1. Section 7-1-103 is amended to read:

31 7-1-103. Definitions.

32 As used in this title:

33 (1) (a) "Bank" means a person authorized under the laws of this state, another state, or  
34 the United States to accept deposits from the public.

35 (b) "Bank" does not include:

36 (i) a federal savings and loan association or federal savings bank;

37 (ii) an industrial bank subject to Chapter 8, Industrial Banks;

38 (iii) a federally chartered credit union; or

39 (iv) a credit union subject to Chapter 9, Utah Credit Union Act.

40 (2) "Banking business" means the offering of deposit accounts to the public and the  
41 conduct of such other business activities as may be authorized by this title.

42 (3) (a) "Branch" means a place of business of a financial institution, other than its main  
43 office, at which deposits are received and paid.

44 (b) "Branch" does not include:

45 (i) an automated teller machine, as defined in Section 7-16a-102;

46 (ii) a point-of-sale terminal, as defined in Section 7-16a-102; or

47 (iii) a loan production office under Section 7-1-715.

48 (4) "Commissioner" means the Commissioner of Financial Institutions.

49 (5) "Control" means the power, directly or indirectly, or through or in concert with one  
50 or more persons, to:

51 (a) direct or exercise a controlling influence over:

52 (i) the management or policies of a financial institution; or

53 (ii) the election of a majority of the directors or trustees of an institution;

54 (b) vote 20% or more of any class of voting securities of a financial institution by an  
55 individual; or

56 (c) vote more than 10% of any class of voting securities of a financial institution by a  
57 person other than an individual.

58 (6) "Credit union" means a cooperative, nonprofit association incorporated under:

59 (a) Chapter 9, Utah Credit Union Act; or

60 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.

61 (7) "Department" means the Department of Financial Institutions.

62 (8) "Depository institution" means a bank, savings and loan association, savings bank,

63 industrial bank, credit union, or other institution that:

64 (a) holds or receives deposits, savings, or share accounts;

65 (b) issues certificates of deposit; or

66 (c) provides to its customers other depository accounts that are subject to withdrawal  
67 by checks, drafts, or other instruments or by electronic means to effect third party payments.

68 (9) (a) "Depository institution holding company" means:

69 (i) a person other than an individual that:

70 (A) has control over ~~[any]~~ a depository institution; or

71 (B) becomes a holding company of a depository institution under Section 7-1-703; or

72 (ii) a person other than an individual that the commissioner finds, after considering the  
73 specific circumstances, is exercising or is capable of exercising a controlling influence over a  
74 depository institution by means other than those specifically described in this section.

75 (b) Except as provided in Section 7-1-703, a person is not a depository institution  
76 holding company solely because it owns or controls shares acquired in securing or collecting a  
77 debt previously contracted in good faith.

78 (10) "Financial institution" means ~~[any]~~ an institution subject to the jurisdiction of the  
79 department because of this title.

80 (11) (a) "Financial institution holding company" means a person, other than an  
81 individual that has control over ~~[any]~~ a financial institution or ~~[any]~~ a person that becomes a  
82 financial institution holding company under this chapter, including an out-of-state or foreign  
83 depository institution holding company.

84 (b) Ownership of a service corporation or service organization by a depository  
85 institution does not make that institution a financial institution holding company.

86 (c) A person holding 10% or less of the voting securities of a financial institution is  
87 rebuttably presumed not to have control of the institution.

88 (d) A trust company is not a holding company solely because it owns or holds 20% or  
89 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust  
90 company exercises a controlling influence over the management or policies of the financial  
91 institution.

92 (12) "Foreign depository institution" means a depository institution chartered or  
93 authorized to transact business by a foreign government.

94 (13) "Foreign depository institution holding company" means the holding company of a  
95 foreign depository institution.

96 (14) "Home state" means:

97 (a) for a state chartered depository institution, the state that charters the institution;

98 (b) for a federally chartered depository institution, the state where the institution's main  
99 office is located; and

100 (c) for a depository institution holding company, the state in which the total deposits of  
101 all depository institution subsidiaries are the largest.

102 (15) "Host state" means:

103 (a) for a depository institution, a state, other than the institution's home state, where the  
104 institution maintains or seeks to establish a branch; and

105 (b) for a depository institution holding company, a state, other than the depository  
106 institution holding company's home state, where the depository institution holding company  
107 controls or seeks to control a depository institution subsidiary.

108 (16) "Industrial bank" means a corporation or limited liability company conducting the  
109 business of an industrial bank under Chapter 8, Industrial Banks.

110 (17) "Industrial loan company" means the same as that term is defined in Section  
111 7-8-21.

112 (18) "Insolvent" means the status of a financial institution that is unable to meet its  
113 obligations as they mature.

114 (19) "Institution" means:

115 (a) a corporation;

116 (b) a limited liability company;

117 (c) a partnership;

118 (d) a trust;

119 (e) an association;

120 (f) a joint venture;

121 (g) a pool;

122 (h) a syndicate;

123 (i) an unincorporated organization; or

124 (j) any form of business entity.

125 (20) "Institution subject to the jurisdiction of the department" means an institution or  
126 other person described in Section 7-1-501.

127 (21) "Liquidation" means the act or process of winding up the affairs of an institution  
128 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and  
129 appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by  
130 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding  
131 Companies.

132 (22) "Liquidator" means a person, agency, or instrumentality of this state or the United  
133 States appointed to conduct a liquidation.

134 (23) (a) "Money services business" includes:

135 (i) a check casher;

136 (ii) a deferred deposit lender;

137 (iii) an issuer or seller of traveler's checks or money orders; and

138 (iv) a money transmitter.

139 (b) "Money services business" does not include:

140 (i) a bank;

141 (ii) a person registered with, and functionally regulated or examined by the Securities  
142 Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial  
143 agency that engages in financial activities that, if conducted in the United States, would require  
144 the foreign financial agency to be registered with the Securities Exchange Commission or the  
145 Commodity Futures Trading Commission; or

146 (iii) an individual who engages in an activity described in Subsection (23)(a) on an  
147 infrequent basis and not for gain or profit.

148 (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

149 (25) (a) "NOW account" means a savings account from which the owner may make  
150 withdrawals by negotiable or transferable instruments for the purpose of making transfers to  
151 third parties.

152 (b) A "NOW account" is not a demand deposit.

153 (c) ~~Neither the~~ The owner of a NOW account ~~[nor]~~ or any third party holder of an  
154 instrument requesting withdrawal from the account ~~[has]~~ does not have a legal right to make  
155 withdrawal on demand.

156 (26) "Out-of-state" means, in reference to a depository institution or depository  
157 institution holding company, an institution or company whose home state is not Utah.

158 (27) "Person" means:

159 (a) an individual;

160 (b) a corporation;

161 (c) a limited liability company;

162 (d) a partnership;

163 (e) a trust;

164 (f) an association;

165 (g) a joint venture;

166 (h) a pool;

167 (i) a syndicate;

168 (j) a sole proprietorship;

169 (k) an unincorporated organization; or

170 (l) any form of business entity.

171 (28) "Receiver" means a person, agency, or instrumentality of this state or the United  
172 States appointed to administer and manage an institution subject to the jurisdiction of the  
173 department in receivership, as provided in Chapter 2, Possession of Depository Institution by  
174 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding  
175 Companies.

176 (29) "Receivership" means the administration and management of the affairs of an  
177 institution subject to the jurisdiction of the department to conserve, preserve, and properly  
178 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in  
179 Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition  
180 of Failing Depository Institutions or Holding Companies.

181 (30) "Savings account" means ~~any~~ a deposit or other account at a depository  
182 institution that is not a transaction account.

183 (31) "Savings and loan association" means:

184 (a) a federal savings and loan association; and

185 (b) an out-of-state savings and loan association.

186 (32) "Service corporation" or "service organization" means a corporation or other

187 business entity owned or controlled by one or more financial institutions that is engaged or  
188 proposes to engage in business activities related to the business of financial institutions.

189 (33) "State" means, unless the context demands otherwise:

190 (a) a state;

191 (b) the District of Columbia; or

192 (c) the territories of the United States.

193 (34) "Subsidiary" means a business entity under the control of an institution.

194 (35) "Technology service provider" means a person that provides a data processing  
195 service or activity that supports the financial services or Internet related services of a depository  
196 institution subject to the jurisdiction of the department, including supporting:

197 (a) lending;

198 (b) money transfers;

199 (c) fiduciary activities;

200 (d) trading activities;

201 (e) deposit taking;

202 (f) web services and electronic bill payments;

203 (g) mobile applications;

204 (h) system and software development and maintenance; and

205 (i) security monitoring.

206 (36) (a) "Transaction account" means a deposit, account, or other contractual  
207 arrangement in which a depositor, account holder, or other customer is permitted, directly or  
208 indirectly, to make withdrawals by:

209 (i) check or other negotiable or transferable instrument;

210 (ii) payment order of withdrawal;

211 (iii) telephone transfer;

212 (iv) other electronic means; or

213 (v) any other means or device for the purpose of making payments or transfers to third  
214 persons.

215 (b) "Transaction account" includes:

216 (i) demand deposits;

217 (ii) NOW accounts;

218 (iii) savings deposits subject to automatic transfers; and

219 (iv) share draft accounts.

220 (37) "Trust company" means a person authorized to conduct a trust business, as  
221 provided in Chapter 5, Trust Business.

222 (38) "Utah depository institution" means a depository institution whose home state is  
223 Utah.

224 (39) "Utah depository institution holding company" means a depository institution  
225 holding company whose home state is Utah.

226 Section 2. Section **7-1-201** is amended to read:

227 **7-1-201. Creation of department -- Organization.**

228 (1) There is created the Department of Financial Institutions that is responsible for the  
229 execution of the laws of this state relating to ~~[all]~~ a financial [institutions and] institution or  
230 other [persons] person subject to this title, and relating to the businesses ~~[they conduct]~~ that the  
231 financial institution or other person conducts.

232 (2) The department organization includes:

233 (a) the commissioner of financial institutions, who shall be the chief executive officer  
234 of the department;

235 (b) the Board of Financial Institutions;

236 (c) the chief examiner;

237 (d) the deputy commissioner;

238 (e) the supervisor of banks;

239 (f) the supervisor of industrial banks;

240 (g) the supervisor of credit unions;

241 (h) the supervisor of money services businesses; ~~[and]~~

242 (i) the supervisor of holding companies; and

243 ~~[†]~~ (j) other supervisors, examiners, and personnel as may be required to carry out the  
244 duties, powers, and responsibilities of the department.

245 (3) A power or duty of the commissioner under this title may be exercised by the  
246 deputy commissioner or a supervisor described in Subsection (2) if the commissioner delegates  
247 in writing the authority to exercise the power or duty to the deputy commissioner or supervisor.

248 Section 3. Section **7-1-208.1** is amended to read:



249 **7-1-208.1. Supervisor of holding companies -- Qualifications -- Responsibilities.**

250 (1) The commissioner may designate an examiner as supervisor of [trusts] holding  
251 companies who shall be a citizen of the United States and shall have sufficient training and  
252 experience with regard to [trusts] holding companies to demonstrate [his] the examiner's  
253 qualifications and fitness to perform the duties of [his office] the supervisor of holding  
254 companies.

255 (2) The supervisor of [trusts] holding companies is responsible, subject to the direction  
256 and control of the commissioner, for the general supervision and examination of all [trusts]  
257 holding companies subject to the jurisdiction of the department under this title. [He] The  
258 supervisor of holding companies shall assist and advise the commissioner in the execution of  
259 the laws of this state relating to [trusts] holding companies and shall perform other duties  
260 prescribed in this title or assigned to [him] the supervisor of holding companies by the  
261 commissioner.

262 Section 4. Section **7-1-209** is amended to read:

263 **7-1-209. Additional supervisors, examiners, and other personnel -- Compensation**  
264 **-- Travel expenses.**

265 (1) In addition to the supervisors under Sections 7-1-205 through 7-1-208.1 and  
266 7-1-208.3, the commissioner may appoint additional supervisors as necessary. The  
267 commissioner may assign to any supervisor responsibility, subject to the direction and control  
268 of the commissioner, for the general supervision and examination of any class of financial  
269 institutions or other persons not specifically assigned to another supervisor.

270 (2) The commissioner may employ examiners required for the proper conduct of the  
271 department. These examiners may not be interested, directly or indirectly, in any institution  
272 under the jurisdiction and supervision of the department. They shall perform duties prescribed  
273 by this title or assigned to them by the commissioner.

274 (3) The commissioner may delegate to the chief examiner or any supervisor the duty of  
275 conducting hearings in carrying out the duties, powers, and functions of the department, or [he]  
276 the commissioner may employ, on a regular or part-time basis, similarly qualified persons to  
277 act as hearing officers for those purposes.

278 (4) The commissioner may appoint or employ, on a permanent or consulting basis,  
279 other persons qualified by education, training, and experience for the needs of the department

280 as the commissioner considers necessary to carry out the duties, powers, and responsibilities of  
281 the department.

282 (5) The commissioner may employ clerical help to properly carry on the work of the  
283 department.

284 (6) The salaries of the employees of the department shall be fixed in accordance with  
285 salary and merit standards adopted by the Division of Finance and are payable in the same  
286 manner as the salaries of other state employees. All actual and necessary traveling expenses of  
287 the commissioner, supervisors, examiners, and other employees of the department incurred in  
288 the discharge of their duties shall be fully itemized upon proper vouchers and certified by the  
289 commissioner to the director of the Division of Finance.

290 Section 5. Section **7-1-703** is amended to read:

291 **7-1-703. Restrictions on acquisition of institutions and holding companies --**  
292 **Enforcement.**

293 (1) Unless the commissioner gives prior written approval under Section 7-1-705, ~~no~~ a  
294 person may not:

295 (a) acquire, directly or indirectly, control of a depository institution or depository  
296 institution holding company subject to the jurisdiction of the department;

297 (b) vote the stock of ~~any~~ a depository institution or depository institution holding  
298 company subject to the jurisdiction of the department acquired in violation of Section 7-1-705;

299 (c) acquire all or ~~any~~ a material portion of the assets of a depository institution or a  
300 depository institution holding company subject to the jurisdiction of the department;

301 (d) assume all or ~~any~~ a material portion of the deposit liabilities of a depository  
302 institution subject to the jurisdiction of the department;

303 (e) take any action that causes a depository institution to become a subsidiary of a  
304 depository institution holding company subject to the jurisdiction of the department;

305 (f) take any action that causes a person other than an individual to become a depository  
306 institution holding company subject to the jurisdiction of the department;

307 (g) acquire, directly or indirectly, the voting or nonvoting securities of a depository  
308 institution or a depository institution holding company subject to the jurisdiction of the  
309 department if the acquisition would result in the person obtaining more than 20% of the  
310 authorized voting securities of the institution if the nonvoting securities were converted into

311 voting securities; or

312 (h) merge or consolidate with a depository institution or depository institution holding  
313 company subject to the jurisdiction of the department.

314 (2) ~~[Any]~~ A person who willfully violates ~~[any provision of]~~ this section or ~~[any]~~ a rule  
315 or order issued by the department under this section is subject to a civil penalty of not more  
316 than \$1,000 per day during which the violation continues. The commissioner may assess the  
317 civil penalty after giving notice and opportunity for hearing. The commissioner shall collect  
318 the civil penalty by bringing an action in the district court of the county in which the office of  
319 the commissioner is located. ~~[Any]~~ An applicant for approval of an acquisition is considered to  
320 have consented to the jurisdiction and venue of the court by filing an application for approval.

321 (3) The commissioner may secure injunctive relief to prevent ~~[any]~~ a change in control  
322 or impending violation of this section.

323 (4) The commissioner may lengthen or shorten any time period specified in Section  
324 7-1-705 if the commissioner finds it necessary to protect the public interest.

325 (5) The commissioner may exempt ~~[any]~~ a class of financial institutions from this  
326 section by rule if the commissioner finds the exception to be in the public interest.

327 (6) The prior approval of the commissioner under Section 7-1-705 is not required for  
328 the acquisition by a person other than an individual of voting securities or assets of a depository  
329 institution or a depository institution holding company that are acquired by foreclosure or  
330 otherwise in the ordinary course of collecting a debt previously contracted in good faith if these  
331 voting securities or assets are divested within two years of acquisition. The commissioner may,  
332 upon application, extend the two-year period of divestiture for up to three additional one-year  
333 periods if, in the commissioner's judgment, the extension would not be detrimental to the  
334 public interest. The commissioner may adopt rules to implement the intent of this Subsection  
335 (6).

336 (7) (a) An out-of-state depository institution without a branch in Utah, or an  
337 out-of-state depository institution holding company without a depository institution in Utah,  
338 may acquire:

339 (i) a Utah depository institution only if it has been in existence for at least five years; or

340 (ii) a Utah branch of a depository institution only if the branch has been in existence  
341 for at least five years.

342 (b) For purposes of Subsection (7)(a), a depository institution chartered solely for the  
343 purpose of acquiring another depository institution is considered to have been in existence for  
344 the same period as the depository institution to be acquired, so long as it does not open for  
345 business at any time before the acquisition.

346 (c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a  
347 depository institution that is subject to, or is in danger of becoming subject to, supervisory  
348 action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19,  
349 Acquisition of Failing Depository Institutions or Holding Companies, or, if applicable, the  
350 equivalent provisions of federal law or the law of the institution's home state.

351 (d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger  
352 transaction between, affiliate depository institutions.