

UTAH CREDIT UNION ACT AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO FINANCIAL INSTITUTIONS; AMENDING DEFINITIONS;
ADDRESSING ADVERTISEMENT; ADDRESSING FORMATION OF CREDIT UNIONS;
ADDRESSING CONTENTS OF BYLAWS; ADDRESSING LOAN LIMITATIONS OF CREDIT
UNIONS; ADDRESSING MERGERS; ADDRESSING LIMITED FIELD OF MEMBERSHIP
OF CREDIT UNIONS; ADDRESSING INSURANCE REQUIREMENTS; ADDRESSING
PUBLICATIONS; PROVIDING FOR GRANDFATHERING; AND MAKING TECHNICAL
CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-9-3, as last amended by Chapter 8, Laws of Utah 1983

7-9-5, as last amended by Chapter 200, Laws of Utah 1994

7-9-6, as last amended by Chapter 182, Laws of Utah 1996

7-9-11, as enacted by Chapter 16, Laws of Utah 1981

7-9-12, as last amended by Chapter 182, Laws of Utah 1996

7-9-16, as last amended by Chapter 8, Laws of Utah 1983

7-9-20, as last amended by Chapter 200, Laws of Utah 1994

7-9-37, as enacted by Chapter 8, Laws of Utah 1983

7-9-39, as last amended by Chapter 200, Laws of Utah 1994

7-9-45, as last amended by Chapter 49, Laws of Utah 1995

7-9-48, as last amended by Chapter 200, Laws of Utah 1994

ENACTS:

28 **7-9-39.5**, Utah Code Annotated 1953

29 **7-9-51**, Utah Code Annotated 1953

30 **7-9-52**, Utah Code Annotated 1953

31 **7-9-53**, Utah Code Annotated 1953

32 **7-9-54**, Utah Code Annotated 1953

33 REPEALS:

34 **7-9-41**, as last amended by Chapter 182, Laws of Utah 1996

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

36 Section 1. Section **7-9-3** is amended to read:

37 **7-9-3. Definitions.**

38 As used in this chapter:

39 (1) "Association" means a group of persons that:

40 (a) have a similar:

41 (i) interest;

42 (ii) profession;

43 (iii) occupation; or

44 (iv) formal association with an identifiable purpose; or

45 (b) are employed by a common employer.

46 ~~[(1)]~~ (2) "Capital and surplus" means:

47 (a) shares[;];

48 (b) deposits[;];

49 (c) reserves[;]; and

50 (d) undivided earnings.

51 ~~[(2)]~~ (3) "Corporate credit union" means any credit union organized pursuant to any state
52 or federal act for the purpose of serving other credit unions.

53 ~~[(3)]~~ (4) "Deposits" means that portion of the capital paid into the credit union by members
54 on which a specified rate of interest will be paid.

55 ~~[(4)]~~ (5) "Immediate family" means parents, spouse, surviving spouse, children, and
56 siblings of the member.

57 ~~[(5)]~~ (6) "Limited field of membership" means persons ~~[belonging to a group or persons]~~
58 designated as eligible for credit union membership ~~[who:]~~ in accordance with Section 7-9-51 or

59 7-9-53.

60 ~~[(a) have a similar interest, profession, occupation, or formal association with an~~
61 ~~identifiable purpose;]~~

62 ~~[(b) reside within an identifiable neighborhood, community, rural district, or county;]~~

63 ~~[(c) are employed by a common employer;]~~

64 ~~[(d) are employed within a defined business district, industrial park or shopping center;]~~

65 ~~[(e) are employed by the credit union; or]~~

66 ~~[(f) are members of the immediate family of persons within the above groups.]~~

67 (7) (a) "Member-business loan" means any loan, line of credit, or letter of credit, the
68 proceeds of which will be used for:

69 (i) a commercial purpose;

70 (ii) other business investment property or venture purpose; or

71 (iii) an agricultural purpose.

72 (b) "Member-business loan" does not include an extension of credit:

73 (i) that is fully secured by a lien on a one- to four- family dwelling that is the primary
74 residence of a member;

75 (ii) that is fully secured by:

76 (A) shares or deposits in the credit union making the extension of credit; or

77 (B) deposits in other financial institutions;

78 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an
79 advance commitment to purchase in full by, an agency of:

80 (A) the federal government;

81 (B) a state; or

82 (C) a political subdivision of a state; or

83 (iv) that is granted by a corporate credit union to another credit union.

84 (8) "Service center" means a single location at which multiple credit unions can provide
85 products or services directly to their members.

86 ~~[(6)]~~ (9) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from
87 which owners are permitted to make withdrawals by negotiable or transferable instruments or other
88 orders for the purpose of making transfers to other persons or to the owner.

89 ~~[(7)]~~ (10) "Shares" means that portion of the capital paid into the credit union by members

on which dividends may be paid.

Section 2. Section **7-9-5** is amended to read:

7-9-5. Powers of credit unions.

In addition to the powers specified elsewhere in this chapter, a credit union may:

(1) make contracts;

(2) sue and be sued;

(3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;

(4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;

(5) incur and pay necessary and incidental operating expenses;

(6) require an entrance or membership fee;

(7) receive the funds of its members in payment for:

(a) shares[;];

(b) share certificates[;];

(c) deposits[;];

(d) deposit certificates[;];

(e) share drafts[;];

(f) NOW accounts[;]; and

(g) other instruments;

(8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including, but not limited to, drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures established by the board of directors, including, but not limited to, drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;

(9) charge fees for its services;

(10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;

(11) extend credit secured by real estate;

(12) make loan participation arrangements with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the board of directors, if the credit union that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan;

(13) sell and pledge eligible obligations in accordance with written policies of the board of directors;

(14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;

(15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;

(16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;

(17) discount and sell notes and obligations;

(18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;

(19) invest funds as provided in this title and in its bylaws;

(20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;

(21) (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes[;]; and

(b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;

(22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;

(23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;

(24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;

(25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including, but not limited to, individual retirement accounts as defined by Section 408, Internal Revenue Code;

(26) purchase reasonable disability insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;

(27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in its bylaws;

(28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;

(29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:

(a) the participation is not inconsistent with the law and rules of the department[-]; and [if]

(b) any credit union participating in any system notifies the department as provided by law;

(30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;

(31) provide any act necessary to obtain and maintain membership in the credit union;

(32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;

(33) undertake other activities relating to its purpose as its bylaws may provide;

(34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner; [and]

(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs[-]; and

(36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:

(a) be eligible for membership in the credit union; and

(b) become a member of the credit union.

Section 3. Section 7-9-6 is amended to read:

7-9-6. Formation of corporation to conduct credit union -- Approval of commissioner.

(1) (a) Ten or more incorporators belonging to the same group of 200 persons or more having a limited field of membership may, with the approval of the commissioner, form a corporation to conduct a credit union under:

(i) this chapter~~[-]~~;

(ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act~~[-]~~; and

(iii) Chapter 1.

(b) This chapter takes precedence over conflicting provisions of other state law governing:

(i) the formation of the corporation; and ~~[governing]~~

(ii) the duties and obligations of:

(A) the corporation~~[-and of its]~~;

(B) the corporation's officers; and ~~[stockholders or]~~

(C) the corporation's shareholders or members.

(2) ~~[Except for regional and community groups, the]~~ The commissioner may grant the approval referenced in Subsection (1) ~~[when satisfied]~~ if the commissioner finds that:

(a) the proposed limited field of ~~[operation]~~ membership is favorable to the success of the credit union ~~[and that]~~;

(b) the standing of the proposed membership will give assurance that its affairs will be administered in accordance with this chapter~~[-]~~;

(c) the proposed credit union has a reasonable promise of financial viability; and

(d) to do so would not result in a substantial adverse financial impact on an existing credit union having the same or substantially the same limited field of membership.

(3) (a) ~~[If]~~ Except as provided in Subsection (3)(b) and in addition to the requirements of Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.

(b) Notwithstanding Subsection (3)(a):

(i) if the ~~[applicant is not a regional or community group, the applicant is]~~ proposed credit union has a limited field of membership that does not base eligibility on residence in a county, the persons seeking formation of the proposed credit union are not required to provide the notice required under Subsection 7-1-704(3); and

(ii) a credit union may not be required to obtain federal insurance if the credit union complies with Subsection 7-9-45(2).

~~[(4) The commissioner may grant approval to a financially viable applicants, unless the commissioner finds that to do so would result in a substantial adverse financial impact on an existing credit union having the same or substantially the same limited field of membership.]~~

Section 4. Section **7-9-11** is amended to read:

7-9-11. Bylaws and amendments to be approved.

(1) ~~[No]~~ A credit union [shall] may not receive payments on shares, deposits, or certificates, or make any loans or other transactions, until its bylaws have been approved in writing by the commissioner.

(2) ~~[Amendments]~~ An amendment to [its] a credit union's bylaws [shall] does not become operative until the amendment to the bylaws ~~[have been]~~ is approved by the commissioner.

(3) (a) If the amendment to the bylaws of a credit union expands the limited field of membership of a credit union as described in Subsection 7-9-52(1), the commissioner's approval of the amendment is subject to Section 7-9-52.

(b) If the amendment to the bylaws of a credit union terminates the grandfathering of a limited field of membership under Section 7-9-54, the commissioner's approval of the amendment is subject to Section 7-9-54.

(c) If the bylaws or an amendment to the bylaws of a credit union adds an association to the limited field of membership of the credit union, the commissioner may require that the credit union provide written confirmation from the association that the association has agreed to be served by the credit union.

Section 5. Section **7-9-12** is amended to read:

7-9-12. Contents of bylaws.

The bylaws of a credit union shall specify at least the following:

- (1) the name of the credit union;
- (2) the purpose for which it was formed;
- (3) ~~[the conditions of domicile or vocation which qualify persons or co-operative societies for]~~ a limited field of membership of the credit union that complies with Section 7-9-51 or 7-9-53;
- (4) the number of directors and procedures for their election;
- (5) the term of directors;

- 245 (6) whether a credit manager, credit committee, or combination of both shall be
246 responsible for credit functions of the credit union;
- 247 (7) the duties of the officers;
- 248 (8) the time of year of the annual meeting of members;
- 249 (9) the manner in which members shall be notified of meetings;
- 250 (10) the number of members which shall constitute a quorum at meetings;
- 251 (11) the manner of amending;
- 252 (12) the manner in which officers may act as surety; and
- 253 (13) such other matters, rules, and regulations as the board of directors consider necessary.

254 Section 6. Section **7-9-16** is amended to read:

255 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
256 **of membership.**

257 (1) [Any] A person within the limited field of membership of a credit union may be
258 admitted to membership, upon:

- 259 (a) payment of any required entrance or membership fee;
- 260 (b) payment for one or more shares; and
- 261 (c) compliance with this chapter and the bylaws of the [corporate] credit union.

262 (2) A member who is eligible for membership in the credit union at the time the member
263 is admitted as a member but who is no longer in the limited field of membership of a credit union
264 may retain membership in the credit union unless otherwise provided in the bylaws of the credit
265 union.

266 [~~(2) Members~~] (3) A member of the credit union may not be held personally or
267 individually liable for payment of the credit union's debts.

268 [~~(3)~~] (4) The credit union may close the account of any member whose actions have
269 resulted in any financial loss to the credit union.

270 [~~(4)~~] (5) Denial of membership is not considered a denial of credit.

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

272 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

275 (2) The bylaws may provide balloting by:

276 (a) mail [or];
277 (b) ballot box[.]; or
278 (c) both mail and ballot box.
279 (3) Voting may not be by proxy.
280 (4) Members of the board of directors shall hold office for the terms prescribed in the
281 bylaws.
282 (5) The board of directors shall meet at least monthly.
283 (6) The board of directors shall have the general management of the affairs, funds, and
284 records of the credit union. In particular, [they] the board of directors shall:
285 (a) act upon applications for membership;
286 (b) act upon expulsion of members;
287 (c) fix the amount of surety bond required of each officer or employee having custody of
288 funds;
289 (d) determine the rate of interest or dividend allowed on shares and deposits;
290 (e) determine the terms and conditions of credit granted to members;
291 (f) lend money, borrow money, and pledge security for any borrowing;
292 (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in
293 the supervisory committee until the election and qualification of officers to fill those vacancies;
294 (h) appoint up to two alternate directors as provided in the bylaws;
295 (i) fix the amount of the entrance fee;
296 (j) declare dividends and their amount;
297 (k) make recommendations to meetings of the members relative to amendments to the
298 articles of incorporation, and transact any other business of the credit union; and
299 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
300 any one member, up to the [limit] limitations described in Subsection (7).
301 (7) (a) [~~Except as provided in Subsection (7)(b), and unless the board of directors sets a~~
302 ~~lower limit, the maximum amount of]~~ The credit that may be outstanding or available [~~to any one~~
303 ~~member]~~ by a credit union at any one time [~~may not exceed]~~ is subject to the limitations described
304 in Subsections (7)(b) and (c):
305 (i) except as provided in Subsection (7)(d) through (7)(f); or
306 (ii) unless the board of directors:

307 (A) sets a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or

308 (B) requires that the person described in Subsection (7)(b)(ii)(A) be a member of the credit
309 union for more than six months before the date a member-business loan is extended.

310 (b) (i) A credit union may not extend credit that is not a member-business loan to a
311 member if as a result of that extension of credit the total credit that is not a member-business loan
312 that the credit union has issued to that member exceeds at any one time:

313 [(i)] (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:

314 (I) \$1,000; or

315 (II) 15% of capital and surplus up to a total of \$25,000 [for a credit union with less than
316 \$2,000,000 in capital and surplus]; or

317 [(ii)] (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:

318 (I) \$25,000[-];

319 (II) 1% of capital and surplus[-]; or

320 (III) 25% of the regular reserve [for a credit union with \$2,000,000 or more in capital and
321 surplus].

322 (ii) Beginning May 3, 1999, a credit union may not extend a member-business loan to a
323 person:

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

327 (II) unless the person is an individual who is a member of the credit union for at least six
328 months prior to the date of the extension of the member-business loan; or

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

332 (I) 10% of the credit union's capital and surplus; or

333 (II) \$250,000.

334 (c) (i) Beginning May 3, 1999, a credit union may not extend a member-business loan if
335 as a result of that member-business loan the credit union's aggregate member-business loan amount
336 calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum of:

337 (A) the actual undivided earnings; and

338 (B) the actual reserves other than the regular reserves.

339 (ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount of
340 a credit union equals:

341 (A) the sum of the total amount financed under all member-business loans outstanding at
342 the credit union; minus

343 (B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):

344 (I) that is secured by share or deposit savings in the credit union; or

345 (II) for which the repayment is insured or guaranteed by, or there is an advance
346 commitment to purchase by an agency of the federal government, a state, or a political subdivision
347 of the state.

348 [(b)] (d) A credit union may [loan to a member] extend credit that is not a
349 member-business loan in an amount [in excess of] that exceeds the limits described in Subsection
350 (7)[(a)](b)(i) only if the excess portion is fully secured by share or deposit savings in the credit
351 union.

352 (e) (i) Except as provided in Subsection (7)(e)(ii), a credit union may extend a
353 member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(i)(B)
354 only if:

355 (A) that portion that is in excess of the limits described in Subsection (7)(b)(i)(B) is
356 secured by share or deposit savings in the credit union; or

357 (B) the repayment of that portion that is in excess of the limits described in Subsection
358 (7)(b)(i)(B) is insured or guaranteed by, or there is an advance commitment to purchase that excess
359 portion by, an agency of:

360 (I) the federal government;

361 (II) a state; or

362 (III) a political subdivision of the state.

363 (ii) Notwithstanding Subsection (7)(e)(i), a credit union may not extend a
364 member-business loan if the total amount financed by the credit union as part of the
365 member-business loan exceeds \$1,000,000.

366 (f) For a member-business loan that is extended through a loan participation arrangement
367 in accordance with Subsection 7-9-5(12):

368 (i) in applying the limitation of Subsection (7)(e), each credit union participating in the

member-business loan may extend up to \$1,000,000 of the amount financed; and

(ii) the requirement of Subsection (7)(c)(i)(A) applies to membership in any credit union that participates in the loan participation arrangement for the member-business loan.

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

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

(b) within 30 days after the annual meeting of the members, shall appoint:

(i) a credit committee consisting of not less than three members[;]; or [may appoint]

(ii) a credit manager[;] in lieu of a credit committee;

(c) shall appoint a president to serve as general manager;

(d) shall have an executive committee;

(e) may appoint an investment officer;

(f) shall elect a secretary;

(g) may appoint other officers and committees that it considers necessary;

(h) shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies; and

(i) on or before January 31 of each year, shall provide for:

(i) share insurance for the shares and deposits of the credit union from the National Credit Union Administration or successor federal agency[;]; or

(ii) security expressly pledged for the payment of the shares and deposits in accordance with Section 7-9-45.

(9) [No] A person may not be a member of more than one committee except as otherwise provided in this chapter or in the credit union bylaws.

(10) The president and secretary may not be the same person.

Section 8. Section **7-9-37** is amended to read:

7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or acquired credit union.

Members of a dissolved, merged, consolidated, transferred, or acquired credit union may become members of another existing credit union with a related limited field of membership [or geographical location] as approved by the commissioner.

Section 9. Section **7-9-39** is amended to read:

7-9-39. Voluntary merger.

(1) Any credit union may merge with another credit union under the existing charter of the other credit union when all of the following have occurred:

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

(b) the commissioner approves the merger plan;

(c) the majority of the members of each merging credit union present at a meeting called for the purpose of considering the merger plan votes to approve [it] the merger plan, but a vote of the membership of the surviving credit union is not required if its board of directors determines that the merger will not have any significant effect on the organization, membership, or financial condition of the credit union; and

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

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

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

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

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

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

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

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

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

(i) the date on which the last approval or vote required under Subsection (1) was obtained[-]; or

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

(3) On the effective date of any merger[-];

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

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

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

(a) may admit as a member any member of the merging credit union that is not in the limited field of membership of the surviving credit union if the member of the merging credit union was a member of that credit union at the time of merger; and

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

~~[(4)]~~ (5) (a) This section shall be interpreted, whenever possible, to permit a credit union chartered under this chapter to merge with a credit union chartered under any other law[, regardless of commonality,] if the preservation of membership interest is concerned.

(b) The commissioner may under Subsection (1)(b) approve a merger plan that includes the addition of all or part of the limited field of membership of the merging credit union to the limited field of membership of the surviving credit union if the commissioner finds that:

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

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

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

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

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

(ii) if the credit union has a grandfathered limited field of membership under Subsection 7-9-53(2)(d), the county that is the domicile-county of the surviving credit union under Section 7-9-53;

(b) Within the surviving credit union's domicile-county, the surviving credit union may

establish, relocate, or otherwise change the physical location of the credit union's:

(i) main office; or

(ii) branch.

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

(i) establish a main office or branch if the main office or branch was not located in the county as of the date that the merger is effective;

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

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

(d) Within a county that is not in the surviving credit union's limited field of membership as of the date that the merger is effective, the surviving credit union may establish, relocate, or otherwise change the physical location of a main office or branch, if the main office or branch serves only members of the surviving credit union that belong to an association that is in the credit union's limited field of membership.

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

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

(ii) a person belonging to an association that:

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

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

Section 10. Section 7-9-39.5 is enacted to read:

7-9-39.5. Supervisory merger.

If a credit union is merged with another credit union as a result of a supervisory action under Chapter 2 or 19, the commissioner may permit the surviving credit union to have a limited field of membership that is larger than a limited field of membership permitted under Section 7-9-51.

Section 11. Section 7-9-45 is amended to read:

7-9-45. Insurance of shares and deposits -- Security shares and deposits.

(1) [Each] Except as provided in Subsection (2), a credit union [or branch] subject to the jurisdiction of the department shall obtain and maintain insurance on shares and deposits from the National Credit Union Administration or successor federal deposit insurance agency.

(2) Notwithstanding Section 7-1-704 and Subsection (1), a credit union may not be required to obtain federal insurance on shares and deposits if:

(a) the commissioner approves the credit union's election not to obtain federal insurance on shares and deposits;

(b) as security for the shares and deposits, the credit union maintains securities:

(i) that are issued by or directly and unconditionally guaranteed by:

(A) the United States; or

(B) an agency of the United States;

(ii) that are held in an account with a primary reporting dealer that is:

(A) recognized by the Federal Reserve Bank of New York; and

(B) independent of the credit union;

(iii) that are held in accordance with Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities; and

(iv) in which the department has an express and exclusive security interest; and

(c) the aggregate value of the securities described in Subsection (2)(b) is at all times equal to or greater than 1.5 times the aggregate amount of the shares and deposits of the credit union.

~~[(2)]~~ (3) The commissioner may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.

~~[(3)]~~ (4) Failure to ~~[maintain share and deposit insurance]~~ comply with this section constitutes grounds for supervisory action under Chapter 2 or 19.

Section 12. Section **7-9-48** is amended to read:

7-9-48. Disclosure of share and deposit insurance -- Disclosure if secured through securities.

[Credit unions] (1) A credit union shall comply with all share and deposit insurance disclosure requirements of the National Credit Union Administration or its successor agency.

(2) In addition to the disclosure requirements described in Subsection (1), a credit union that in accordance with Subsection 7-9-45(2) is not insured by the National Credit Union

Administration or successor federal deposit insurance agency shall notify the members of the credit union, as prescribed by rule or order, that deposits and shares in the credit union are not insured by a federal deposit insurance agency.

Section 13. Section **7-9-51** is enacted to read:

7-9-51. Limited field of membership.

(1) Except as provided in Subsection (3), the limited field of membership of a credit union may not be larger than:

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

(b) the employees of the credit union;

(c) residents of a single county; and

(d) one or more associations.

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

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

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

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

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

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

Section 14. Section **7-9-52** is enacted to read:

7-9-52. Expansion of a limited field of membership.

(1) The commissioner shall comply with Subsection (2) if the commissioner receives a request to approve an amendment to the bylaws of a credit union that expands the credit union's limited field of membership to include:

(a) residents of one county; or

(b) an association consisting of 50 or more persons.

(2) If the conditions of Subsection (1) are met, the commissioner shall:

(a) give notice of the request in the manner and to the extent the commissioner considers

555 appropriate to institutions subject to the jurisdiction of the department that:
556 (i) are located in the county, if the limited field of membership is being expanded to
557 include residents of a county; or
558 (ii) serve or may serve the association described in Subsection (1)(b) if that association is
559 being added to the limited field of membership; and
560 (b) cause a supervisor to examine and submit written findings and recommendations to
561 the commissioner as to whether:
562 (i) the credit union is adequately capitalized;
563 (ii) the credit union has the financial capacity to serve the financial needs of the expanded
564 limited field of membership in a safe and sound manner;
565 (iii) the credit union has the managerial expertise to serve the financial needs of the
566 expanded limited field of membership in a safe and sound manner; and
567 (iv) any potential harm the expansion of the limited field of membership may have on the
568 institutions described in Subsection (2)(a) clearly outweighs the probable beneficial effect of the
569 expansion.
570 (3) The commissioner may approve the amendment to the bylaws described in Subsection
571 (1) if the commissioner:
572 (a) has given the notice required under Subsection (2)(a);
573 (b) received the written findings and recommendations of the supervisor under Subsection
574 (2)(b); and
575 (c) finds that:
576 (i) the credit union is adequately capitalized;
577 (ii) the credit union has the financial capacity to serve the financial needs of the expanded
578 limited field of membership in a safe and sound manner;
579 (iii) the credit union has the managerial expertise to serve the financial needs of the
580 expanded limited field of membership in a safe and sound manner; and
581 (iv) any potential harm the expansion of the limited field of membership may have on
582 other institutions subject to the jurisdiction of the department does not clearly outweigh the
583 probable beneficial effect of the expansion.
584 (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the
585 expansion of a credit union limited field of membership.

(5) This section may not be interpreted to permit a credit union to:

(a) expand its limited field of membership to include residents of more than one county;

or

(b) change the county included in the limited field of membership of a credit union, if any.

Section 15. Section **7-9-53** is enacted to read:

7-9-53. Grandfathering.

(1) As used in this section and Section 7-9-54:

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

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

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

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

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

(ii) in which the credit union has located the greatest number of branches as of January 1, 1999.

(c) "Grandfathered limited field of membership" means the limited field of membership as of May 3, 1999, of a credit union described in Subsection (2)(d).

(2) For each credit union formed before January 1, 1999, its limited field of membership as of May 3, 1999, is determined as follows:

(a) if the limited field of membership stated in the bylaws of the credit union as of January 1, 1999, complies with Section 7-9-51, the credit union's limited field of membership is the limited field of membership indicated in its bylaws;

(b) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(b)(ii) if:

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

(B) as of January 1, 1999, the credit union's main office and any of its branches are located in only one county in its limited field of membership;

(ii) as of May 3, 1999, the limited field of membership of a credit union described in Subsection (2)(b)(i) is:

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

(B) the employees of the credit union;

617 (C) residents of the one county in which the credit union has its main office or branches
618 as of January 1, 1999, and

619 (D) any association that as of January 1, 1999, is in the limited field of membership of the
620 credit union;

621 (c) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided
622 in Subsection (2)(c)(ii) if:

623 (A) the limited field of membership of a credit union stated in the bylaws of the credit
624 union as of January 1, 1999, includes residents of more than one county;

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

627 (C) the addition of at least one of the counties in the limited field of membership of the
628 credit union was as a result of a merger pursuant to a supervisory action under Chapter 2 or 19;

629 (ii) as of May 3, 1999, the limited field of membership of a credit union described in
630 Subsection (2)(c)(i) is the same limited field of membership that the credit union would have had
631 under Subsection (2)(d); and

632 (d) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided
633 in Subsection (2)(d)(ii) if:

634 (A) the limited field of membership stated in the bylaws of the credit union as of January
635 1, 1999, includes the residents of more than one county; and

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

638 (ii) as of May 3, 1999, the limited field of membership of a credit union described in
639 Subsection (2)(d)(i) is:

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

641 (B) the employees of the credit union;

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

643 (D) the residents of any county other than the domicile-county;

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

646 (II) in which, as of January 1, 1994, the credit union had located its main office or a
647 branch; and

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

650 (3) If a credit union's limited field of membership is as described in Subsection (2)(d),
651 beginning May 3, 1999, the credit union:

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

654 (i) main office; or

655 (ii) branch;

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

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

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

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

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

665 (iii) relocate the credit union's main office or a branch located in the county as of January
666 1, 1999, unless the commissioner finds that the main office or branch is relocated within a
667 three-mile radius of where it was originally located;

668 (c) within a county that is not in the credit union's grandfathered limited field of
669 membership, may establish, relocate, or otherwise change the physical location of a main office
670 or branch, if the commissioner finds that the main office or branch is to be established, relocated,
671 or otherwise changed solely for the purpose of serving members of the credit union that belong to
672 an association that is in the credit union's limited field of membership; and

673 (d) may only admit as a member:

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

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

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

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

678 (4) (a) If a credit union's limited field of membership is as described in Subsection (2)(b),

as of May 3, 1999, the credit union may operate as a credit union having a limited field of membership under Section 7-9-51.

(b) If a credit union's limited field of membership is as described in Subsection (2)(c), as of May 3, 1999, the credit union may operate as a credit union having a limited field of membership under Subsection 7-9-51, except that the credit union may admit as members residents of any county that is included in the limited field of membership of the credit union under Subsection (2)(c)(ii).

(5) (a) Notwithstanding Subsections (1) through (3), after May 3, 1999, a credit union described in Subsection (2)(d) may:

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

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

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

(i) establish a branch in a county that is not in the credit union's grandfathered limited field of membership unless the branch meets the requirements of Subsection (3)(c); or

(ii) include in its limited field of membership an association that:

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

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

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

(7) This section does not exempt a credit union from complying with any other requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

Section 16. Section **7-9-54** is enacted to read:

7-9-54. Electing to terminate grandfathering.

(1) (a) In accordance with this section, a credit union that has a grandfathered limited field of membership under Section 7-9-53 may terminate the grandfathering of the credit union's grandfathered limited field of membership if, by no later than May 3, 2000, the credit union has

received approval from the commissioner in accordance with Section 7-9-11 of an amendment to the bylaws of the credit union that establishes a limited field of membership in compliance with Section 7-9-51.

(b) Notwithstanding Subsection (1)(b), a credit union seeking to terminate its grandfathered limited field of membership may not amend its bylaws to include in the limited field of membership of the credit union after termination of the grandfathering a county other than the domicile-county of the credit union.

(2) On receipt of a request under Subsection (1) to approve an amendment to the bylaws of a credit union, the commissioner shall give notice of the request in the manner and to the extent the commissioner considers appropriate to institutions subject to the jurisdiction of the department that:

(a) are located in a county within the credit union's grandfathered limited field of membership; or

(b) may be affected by the termination of the grandfathering.

(3) The commissioner may approve the amendment to the bylaws described in Subsection (1) if the commissioner:

(a) has given the notice required by Subsection (2); and

(b) finds that any harm the termination of the grandfathering may have on other institutions subject to the jurisdiction of the commissioner does not clearly outweigh the probable beneficial effect of the termination.

(4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the termination of the grandfathering of a credit union.

(5) Beginning on the date the commissioner approves the amendments to the bylaws of a credit union under Subsection (3), the credit union:

(a) may not admit as a member a resident of the county for which grandfathering is terminated;

(b) may admit as a member a person belonging to an association regardless of whether the association resides in the domicile-county within the limited field of membership of the credit union;

(c) may serve a member of the credit union who is not in the credit union's grandfathered limited field of membership, if the member is a member of the credit union on the day that the

741 grandfathering terminates;

742 (d) may operate a main office or branch that is located outside the limited field of
743 membership of a credit union after grandfathering terminates but is operated by the credit union
744 on the day that the grandfathering terminates;

745 (e) may establish, relocate, or otherwise change the physical facilities of the credit union's
746 main office or of a branch in the domicile-county of the credit union if that county is included in
747 the limited field of membership of the credit union after termination of the grandfathering; and

748 (f) may establish, relocate, or otherwise change the physical location of a main office or
749 branch in a county that is not in the limited field of membership of the credit union after the
750 grandfathering is terminated, if the commissioner finds that the main office or branch is to be
751 established, relocated, or otherwise changed solely for the purpose of serving members of the
752 credit union that belong to an association that is in the credit union's limited field of membership.

753 **Section 17. Repealer.**

754 This act repeals:

755 **Section 7-9-41, Publication of applications -- Hearing and notice on application to**
756 **form community or regional credit union.**

Legislative Review Note

as of 2-15-99 9:13 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel