

1 **FINANCIAL INSTITUTIONS AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 AN ACT RELATING TO FINANCIAL INSTITUTIONS; CREATING THE BOARD OF BANK
6 ADVISORS; CLARIFYING DEFINITIONS; ADDRESSING PER DIEM ASSESSMENTS FOR
7 EXAMINATIONS; CLARIFYING JUDICIAL REVIEW OF ACTS OF COMMISSIONER;
8 ADDRESSING DISCLOSURE OF INFORMATION; ADDRESSING DAYS ON WHICH
9 DEPOSITORY INSTITUTIONS ARE CLOSED; ADDRESSING STAY OF PROCEEDINGS
10 AGAINST INSTITUTIONS; CLARIFYING REFERENCES TO RULES; ADDRESSING
11 RESTRICTIONS ON BANKS' COLLATERAL AND LOAN PRACTICES; CLARIFYING
12 CREDIT UNION SUPERVISORY COMMITTEE DUTIES; AND MAKING TECHNICAL
13 CHANGES.

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

15 AMENDS:

16 **7-1-103**, as last amended by Chapter 111, Laws of Utah 1997

17 **7-1-401**, as last amended by Chapter 144, Laws of Utah 1999

18 **7-1-501**, as last amended by Chapter 49, Laws of Utah 1995

19 **7-1-714**, as last amended by Chapter 161, Laws of Utah 1987

20 **7-1-802**, as last amended by Chapter 182, Laws of Utah 1996

21 **7-1-808**, as enacted by Chapter 200, Laws of Utah 1994

22 **7-2-7**, as last amended by Chapter 267, Laws of Utah 1989

23 **7-3-19**, as last amended by Chapter 8, Laws of Utah 1983

24 **7-3-20**, as last amended by Chapter 8, Laws of Utah 1983

25 **7-5-5**, as last amended by Chapter 161, Laws of Utah 1987

26 **7-9-23**, as last amended by Chapter 182, Laws of Utah 1996

27 **7-18a-207**, as enacted by Chapter 63, Laws of Utah 1996

28 ENACTS:

29 **7-3-40**, Utah Code Annotated 1953

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

31 Section 1. Section **7-1-103** is amended to read:

32 **7-1-103. Definitions.**

33 As used in this title:

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

36 (b) "Bank" does not include:

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

38 (ii) a savings and loan association or savings bank subject to Chapter 7;

39 (iii) an industrial loan corporation subject to Chapter 8;

40 (iv) a federally chartered credit union; or

41 (v) a credit union subject to Chapter 9.

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

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

46 (b) "Branch" does not include:

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

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

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

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

51 (5) "Control" means the power, directly or indirectly, to:

52 (a) direct or exercise a controlling influence over the management or policies of a financial
53 institution, or over 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 5% of any class of voting securities of a financial institution by a person
57 other than an individual.

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

- 59 (a) Chapter 9; 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 loan corporation, credit union, or other institution that holds or receives deposits,
- 64 savings, or share accounts, or issues certificates of deposit, or provides to its customers other
- 65 depository accounts that are subject to withdrawal by checks, drafts, or other instruments or by
- 66 electronic means to effect third party payments.
- 67 (9) (a) "Depository institution holding company" means:
- 68 (i) a person other than an individual that has control over any depository institution or that
- 69 becomes a holding company of a depository institution under Section 7-1-703; or
- 70 (ii) a person other than an individual that the commissioner finds, after considering the
- 71 specific circumstances, is exercising or is capable of exercising a controlling influence over a
- 72 depository institution by means other than those specifically described in this section.
- 73 (b) Except as provided in Section 7-1-703, a person is not a depository institution holding
- 74 company solely because it owns or controls shares acquired in securing or collecting a debt
- 75 previously contracted in good faith.
- 76 (10) "Financial institution" means any institution subject to the jurisdiction of the
- 77 department because of this title.
- 78 (11) (a) "Financial institution holding company" means a person, other than an individual
- 79 that has control over any financial institution or any person that becomes a financial institution
- 80 holding company under this chapter, including an out-of-state or foreign depository institution
- 81 holding company.
- 82 (b) Ownership of a service corporation or service organization by a depository institution
- 83 does not make that institution a financial institution holding company.
- 84 (c) A person holding 5% or less of the voting securities of a financial institution is
- 85 rebuttably presumed not to have control of the institution.
- 86 (d) A trust company is not a holding company solely because it owns or holds 20% or
- 87 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust
- 88 company exercises a controlling influence over the management or policies of the financial
- 89 institution.

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

92 (13) "Foreign depository institution holding company" means the holding company of a
93 foreign depository institution.

94 (14) "Home state" means:

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

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

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

100 (15) "Host state" means:

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

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

106 (16) "Industrial loan corporation" means a corporation [~~or other business entity~~]
107 conducting the business of an industrial loan corporation under Chapter 8.

108 (17) "Insolvent" means the status of a financial institution that is unable to meet its
109 obligations as they mature.

110 (18) "Institution" means a corporation, limited liability company, partnership, trust,
111 association, joint venture, pool, syndicate, unincorporated organization, or any form of business
112 entity.

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

115 (20) "Liquidation" means the act or process of winding up the affairs of an institution
116 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and
117 appropriating profit or loss, as provided in Chapters 2 and 19.

118 (21) "Liquidator" means a person, agency, or instrumentality of this state or the United
119 States appointed to conduct a liquidation.

120 (22) (a) "Member of a savings and loan association" means:

- 121 (i) a person holding a savings account of a mutual association;
- 122 (ii) a person borrowing from, assuming, or becoming obligated upon a loan or an interest
- 123 in a loan held by a mutual association; or
- 124 (iii) any person or class of persons granted membership rights by the articles of
- 125 incorporation or the bylaws of an association.
- 126 (b) A joint and survivorship or other multiple owner or borrower relationship constitutes
- 127 a single membership.
- 128 (23) "Negotiable order of withdrawal" means a draft drawn on a NOW account.
- 129 (24) (a) "NOW account" means a savings account from which the owner may make
- 130 withdrawals by negotiable or transferable instruments for the purpose of making transfers to third
- 131 parties.
- 132 (b) A NOW account is not a demand deposit. Neither the owner of a NOW account nor
- 133 any third party holder of an instrument requesting withdrawal from the account has a legal right
- 134 to make withdrawal on demand.
- 135 (25) "Out-of-state" means, in reference to a depository institution or depository institution
- 136 holding company, an institution or company whose home state is not Utah.
- 137 (26) "Person" means an individual, corporation, limited liability company, partnership,
- 138 trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization,
- 139 or any form of business entity.
- 140 (27) "Receiver" means a person, agency, or instrumentality of this state or the United
- 141 States appointed to administer and manage an institution subject to the jurisdiction of the
- 142 department in receivership, as provided in Chapters 2 and 19.
- 143 (28) "Receivership" means the administration and management of the affairs of an
- 144 institution subject to the jurisdiction of the department to conserve, preserve, and properly dispose
- 145 of the assets, liabilities, and revenues of an institution in possession, as provided in Chapters 2 and
- 146 19.
- 147 (29) "Savings account" means any deposit or other account at a depository institution that
- 148 is not a transaction account.
- 149 (30) "Savings and loan association" means a mutual or capital stock savings association,
- 150 a savings and loan association, a mutual or capital stock savings bank, or a building and loan
- 151 association subject to this title, including all federal associations and all out-of-state associations,

152 as defined in Section 7-7-2.

153 (31) "Service corporation" or "service organization" means a corporation or other business
154 entity owned or controlled by one or more financial institutions that is engaged or proposes to
155 engage in business activities related to the business of financial institutions.

156 (32) "State" means, unless the context demands otherwise, a state, the District of
157 Columbia, or the territories of the United States.

158 (33) "Subsidiary" means a business entity under the control of an institution.

159 (34) (a) "Transaction account" means a deposit, account, or other contractual arrangement
160 in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make
161 withdrawals by check or other negotiable or transferable instrument, by payment order of
162 withdrawal, by telephone transfer, by other electronic means, or by any other means or device for
163 the purpose of making payments or transfers to third persons.

164 (b) "Transaction account" includes:

165 (i) demand deposits;

166 (ii) NOW accounts;

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

168 (iv) share draft accounts.

169 (35) "Trust company" means a person authorized to conduct a trust business, as provided
170 in Chapter 5.

171 (36) "Utah depository institution" means a depository institution whose home state is Utah.

172 (37) "Utah depository institution holding company" means a depository institution holding
173 company whose home state is Utah.

174 Section 2. Section **7-1-401** is amended to read:

175 **7-1-401. Fees payable to commissioner.**

176 (1) Each depository institution under the jurisdiction of the department, except an
177 out-of-state depository institution with a branch in Utah, shall pay an annual fee computed upon
178 the basis of aggregate assets, as shown upon the year-end report of condition at the following rates:

179 (a) on the first \$5,000,000 of these assets, 65 cents per \$1,000 or \$500, whichever is
180 greater;

181 (b) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

182 (c) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

- 183 (d) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
- 184 (e) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
- 185 (f) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
- 186 (g) on all amounts over \$600,000,000 of these assets, 4 cents per \$1,000.
- 187 (2) A financial institution with a trust department shall pay a fee for each examination of
- 188 the trust department by state examiners.
- 189 (3) A credit union in its first year of operation shall pay a basic fee of \$25 instead of the
- 190 fee required under Subsection (1).
- 191 (4) A trust company that is not a depository institution or a subsidiary of a depository
- 192 institution holding company shall pay an annual fee of \$500 and an additional fee for each
- 193 examination by state examiners.
- 194 (5) All other persons and institutions under the jurisdiction of the department that do not
- 195 pay a fee under Subsections (1) through (4) shall pay:
- 196 (a) an annual fee of \$100; and
- 197 (b) an additional fee for each examination by state examiners.
- 198 (6) An applicant under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, 7-5-3, or
- 199 7-18a-202 shall pay:
- 200 (a) a filing fee of \$500; and
- 201 (b) all reasonable expenses incurred in processing the application.
- 202 (7) (a) Per diem assessments for examinations shall be calculated at the rate of \$40 per
- 203 hour;
- 204 (i) for each examiner [up to a maximum of \$320 per examiner per day]; and
- 205 (ii) per hour worked.
- 206 (b) For examination of branches or offices of financial institutions located outside of this
- 207 state, in addition to the per diem assessment under Subsection (7) the institution shall [also] pay
- 208 all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the
- 209 examination.
- 210 (8) A person registering under Section 7-23-103 shall pay an original registration fee of
- 211 \$300.
- 212 Section 3. Section **7-1-501** is amended to read:
- 213 **7-1-501. Institutions and persons subject to jurisdiction of department.**

214 The following persons and institutions are subject to the jurisdiction of the department and
215 are subject to supervision and examination by the department as provided in this title and the rules
216 of the department:

217 (1) all depository institutions chartered under the laws of this state, including any
218 out-of-state branches;

219 (2) all Utah depository institutions chartered by the federal government, but only to the
220 extent the application of this title is authorized by:

221 (a) federal law; or [by]

222 (b) the appropriate federal regulatory agency;

223 (3) all Utah branches of out-of-state depository institutions chartered under the laws of
224 another state;

225 (4) all Utah branches of out-of-state depository institutions chartered by the federal
226 government, but only to the extent the application of this title is authorized by:

227 (a) federal law; or [by]

228 (b) the appropriate federal regulatory agency;

229 (5) all service corporations and service organizations;

230 (6) all trust companies;

231 (7) all escrow companies;

232 (8) all persons or institutions engaged in this state in the business of:

233 (a) guaranteeing or insuring deposits, savings accounts, share accounts, or other accounts
234 in depository institutions;

235 (b) operating a loan production office for a Utah depository institution, an out-of-state
236 depository institution, or a foreign depository institution; [or]

237 (c) allowing persons to effect third party payments from loan, charge, or other accounts
238 by checks, drafts, or other instruments or by electronic means; or

239 (d) a check casher, as defined in Section 7-23-102;

240 (9) all corporations or other business entities owning or controlling an institution subject
241 to the jurisdiction of the department;

242 (10) all subsidiaries and affiliates of an institution subject to the jurisdiction of the
243 department; and

244 (11) any person or institution that, with or without authority to do so, transacts business

245 as, or holds itself out as being, a depository institution, trust company, or any other person or
246 institution described in this section as being subject to the jurisdiction of the department.

247 Section 4. Section ~~7-1-714~~ is amended to read:

248 **7-1-714. Judicial review of acts of commissioner.**

249 [~~(1) Any person aggrieved by any rule, regulation,]~~

250 (1) (a) A financial institution adversely affected by an order, decision, [or] ruling, or other
251 act or failure to act of the commissioner under this title is entitled to judicial review.

252 [~~(2) Judicial review of other agency actions shall be governed by the procedures and~~
253 ~~requirements of this subsection.]~~

254 (b) Except as provided in Section 7-23-106, judicial review is governed by:

255 (i) this section; and

256 (ii) the Utah Rules of Civil Procedure.

257 [~~(a) Within~~] (2) If a financial institution that is adversely affected by an order, decision,
258 or ruling not arising from an adjudicative proceeding seeks judicial review of the order, decision,
259 or ruling, the financial institution shall file a petition for judicial review:

260 (a) no later than 30 days after [receipt] the mailing or publication of [notice of a rule,] the
261 order, [or other] decision, or ruling [not arising from an adjudicative proceeding, or within 120
262 days after the commissioner has failed to act upon a request or application, the aggrieved person
263 may file an application for judicial review]; and

264 (b) with a court of competent jurisdiction [in the county in which the applicant is located,
265 or] in the county where the office of the commissioner is located[, and may request an immediate
266 hearing on the act or failure to act].

267 [~~(b) The court shall require adequate notice to be served on the commissioner and all other~~
268 ~~interested parties and shall give the petition for review precedence on its calendar. (c) The]~~

269 (3) If the commissioner fails to act after receipt of a written request to act or an application,
270 a financial institution adversely affected by the commissioner's failure to act that seeks judicial
271 review of the failure to act shall file a petition for judicial review:

272 (a) no later than 120 days after the day the commissioner receives:

273 (i) the written request to act; or

274 (ii) the application; and

275 (b) with a court of competent jurisdiction in the county where the office of the

276 commissioner is located.

277 (4) In a proceeding under Subsections (2) and (3):

278 (a) the proceeding shall be:

279 (i) heard by the court; and

280 (ii) based on the record made before the commissioner; and

281 (b) the court shall:

282 (i) review the record before the commissioner [and shall];

283 (ii) adjudicate the [question,] petition for judicial review;

284 (iii) enter appropriate orders[;]; and

285 (iv) enforce [them] the orders entered under this section.

286 ~~[(d)]~~ (5) The court may declare void any [rule, regulation,] order, decision, ruling, or other
 287 act or failure to act of the commissioner it finds to be arbitrary, capricious, an abuse of discretion,
 288 or otherwise contrary to law.

289 ~~[(3) Any action for judicial review of acts or failure to act of the commissioner shall be~~
 290 ~~heard by the court and shall be based on the record made before the department.]~~

291 Section 5. Section **7-1-802** is amended to read:

292 **7-1-802. Confidentiality of information received by department -- Availability of**
 293 **information.**

294 (1) The commissioner shall receive and place on file in the department's office all reports
 295 required by law and shall certify all reports required to be published.

296 (2) Except as provided in this section, the following are confidential, not public records,
 297 and not open to public inspection:

298 (a) all reports received or prepared by the department[;];

299 (b) all information obtained from an institution or person under the jurisdiction of the
 300 department[;]; and

301 (c) all orders and related records of the department [are confidential, are not public records,
 302 and are not open to public inspection].

303 (3) The following records and information are public and are open to public inspection:

304 (a) reports of condition required by Section 7-1-318;

305 (b) information that is otherwise generally available to the public; and

306 (c) information contained in, and final decisions on, an application filed under Sections

307 7-1-702, 7-1-703, 7-1-704, 7-1-705, 7-1-706, 7-1-708, 7-1-709, 7-1-712, 7-1-713, or Chapter 19,
308 excluding:

309 (i) proprietary information, business plans, and personal financial information; and

310 (ii) information for which:

311 (A) the applicant requests confidentiality[.]; and

312 (B) the commissioner grants the request for confidentiality.

313 (4) The department may disclose records and information that are not public to the
314 following:

315 (a) to an agency or authority;

316 (i) that regulates:

317 (A) the subject of the record; or

318 (B) an affiliate of the subject of the record, as defined by the commissioner by rule; and

319 (ii) is of:

320 (A) the federal government;

321 (B) the state; or [of]

322 (C) another state [that also regulates the subject of the record];

323 (b) to a federal deposit insurance agency;

324 (c) to an official legally authorized to investigate criminal charges in connection with the
325 affairs of the subject of the record, and to any tribunal conducting legal proceedings resulting from
326 such an investigation;

327 (d) to a person preparing a proposal for merging or acquiring an institution under Chapter
328 2 or 19, but only after the department provides notice of the disclosure to the institution;

329 (e) to any other person, if the commissioner determines, after notice to the institution or
330 person that is the subject of the record and opportunity for hearing, that the interests favoring
331 disclosure of the information outweigh the interests favoring confidentiality of the information;

332 and

333 (f) to any court in a proceeding under:

334 (i) Sections 7-1-304, 7-1-320, 7-1-322[.]; or

335 (ii) a supervisory action under Chapter 2 or 19.

336 (5) The commissioner may limit the use and further disclosure of any information
337 disclosed under Subsection (4):

338 (a) to protect the business confidentiality interest of the subject of the record; and

339 (b) to protect the public interest, such as to avoid:

340 (i) a liquidity crisis in a depository institution; or [to avoid]

341 (ii) undue speculation in securities or currency markets.

342 (6) The department shall disclose information in the manner and to the extent directed by
343 a court order signed by a judge from a court of competent jurisdiction if:

344 (a) the disclosure does not violate applicable federal or state law;

345 (b) the information to be disclosed deals with a matter in controversy over which the court
346 has jurisdiction;

347 (c) the person requesting the order has provided reasonable prior written notice to the
348 commissioner;

349 (d) the court has considered the merits of the request for disclosure and has determined that
350 the interests favoring disclosure of the information outweigh the interests favoring confidentiality
351 of the information; and

352 (e) the court has appropriately limited the use and further disclosure of the information:

353 (i) to protect the business confidentiality interest of the subject of the record; and

354 (ii) to protect the public interest, such as to avoid:

355 (A) a liquidity crisis in a depository institution; or [to avoid]

356 (B) undue speculation in securities or currency markets.

357 Section 6. Section **7-1-808** is amended to read:

358 **7-1-808. Closing days for depository institutions.**

359 (1) Depository institutions shall be closed to the general public on [Saturdays,] Sundays[;
360 and the holidays specified in Section 63-13-2, except as follows:].

361 [~~(a) When New Year's Day falls on a Saturday, depository institutions shall be closed the
362 following Monday, not the preceding Friday.~~]

363 [~~(b) A depository institution or any of its branches may, by the resolution of its board of
364 directors, elect to open to the general public on Saturdays that are not otherwise holidays under
365 Section 63-13-2.~~]

366 (2) (a) The commissioner may designate any additional or different day on which
367 depository institutions are closed to the general public, such as in the event of:

368 (i) an emergency[.];

369 (ii) disaster[-];
 370 (iii) flood[-];
 371 (iv) earthquake[-];
 372 (v) fire[-];
 373 (vi) power outage[-];
 374 (vii) heavy snow[-];
 375 (viii) other impediment to;
 376 (A) business; or
 377 (B) the safety of customers and employees[-]; or
 378 (ix) any circumstance in which closing on an additional or different day serves the public
 379 interest.

380 (b) The commissioner may designate [any such] a day under Subsection (2)(a) as applying
 381 to all or any portion of the state.

382 (3) (a) A depository institution may elect to be open or closed to the general public during
 383 business hours of its choosing on any day not designated under this section as a day for closing.

384 (b) A depository institution shall provide adequate notice to its customers or members of
 385 any change from normal business hours.

386 Section 7. Section **7-2-7** is amended to read:

387 **7-2-7. Stay of proceedings against institution -- Relief.**

388 (1) Except as otherwise specified, a taking of an institution or other person by the
 389 commissioner or a receiver or liquidator appointed by the commissioner under this chapter
 390 operates as a stay of the commencement or continuation of the following with respect to the
 391 institution[- by the commissioner or any receiver or liquidator appointed by him]:

392 (a) any judicial, administrative, or other proceeding, including service of process;

393 (b) the enforcement of any judgment;

394 (c) any act to obtain possession of property;

395 (d) any act to create, perfect, or enforce any lien against property of the institution;

396 (e) any act to collect, assess, or recover a claim against the institution; and

397 (f) the setoff of any debt owing to the institution against any claim against the institution.

398 (2) Except as provided in Subsections (3), (4), (5), and (8):

399 (a) the stay of any action against property of the institution continues until the institution

400 has no interest in the property; and

401 (b) the stay of any other action continues until the earlier of when the case is;

402 (i) closed; or

403 (ii) dismissed~~[, whichever first occurs]~~.

404 (3) On the motion of any party in interest and after notice and a hearing, the court may
405 terminate, annul, modify, condition, or otherwise grant relief from the stay:

406 (a) for cause, including the lack of adequate protection of an interest in property of the
407 party in interest; or

408 (b) with respect to a stay of any action against property if:

409 (i) the institution does not have an equity interest in the property; and

410 (ii) the property would have no value in a reorganization or liquidation of the institution.

411 (4) (a) Thirty days after a request under Subsection (3) for relief from the stay of any act
412 against property of the institution, the stay is terminated with respect to the party in interest making
413 the request unless the court, after notice and a hearing, orders the stay continued in effect pending
414 the conclusion of, or as a result of, a final hearing and determination under Subsection (3).

415 (b) A hearing under this Subsection (4) may be:

416 (i) a preliminary hearing~~[-]~~; or ~~[may be]~~

417 (ii) consolidated with the final hearing under Subsection (3).

418 (c) The court shall order the stay continued in effect pending the conclusion of the final
419 hearing under Subsection (3) if there is a reasonable likelihood that the party opposing relief from
420 the stay will prevail at the conclusion of the final hearing.

421 (d) If the hearing under this Subsection (4) is a preliminary hearing, ~~[then]~~ the final hearing
422 shall be commenced not later than 30 days after the conclusion of the preliminary hearing.

423 (5) Upon request of a party in interest, the court, with or without a hearing, may grant relief
424 from the stay provided under Subsection (1) to the extent necessary to prevent irreparable damage
425 to the interest of an entity in property, if the interest will or could be damaged before there is an
426 opportunity for notice and a hearing under Subsection (3) or (4).

427 (6) In any hearing under Subsection (3) or (4) concerning relief from the stay of any act
428 under Subsection (1):

429 (a) the party requesting relief has the burden of proof on the issue of the institution's equity
430 in property; and

431 (b) the party opposing relief has the burden of proof on all other issues.

432 (7) A person injured by any willful violation of a stay provided by this section shall
433 recover actual damages, including costs and attorneys' fees and, when appropriate, may recover
434 punitive damages.

435 (8) Nothing in this section prevents the holder or the trustee for any holder of any bond,
436 note, debenture, or other evidence of indebtedness issued by a city, county, municipal corporation,
437 commission, district, authority, agency, subdivision, or other public body pursuant to [~~Title 55,~~
438 ~~Chapter 18, or~~] Title 11, Chapter 17, Industrial Facilities and Development, from exercising any
439 rights it may have to sell, take possession of, foreclose upon, or enforce a lien against or security
440 interest in property of an institution [~~which~~] that has been pledged, assigned, or mortgaged as
441 collateral for that bond, note, debenture, or evidence of indebtedness, or as collateral for a letter
442 of credit or other instrument issued in support of that bond, note, debenture, or evidence of
443 indebtedness.

444 (9) Notice of any hearing under this section shall be served as provided in Subsection
445 7-2-9(6).

446 Section 8. Section **7-3-19** is amended to read:

447 **7-3-19. Limitations on loans and extensions of credit.**

448 (1) The total loans and extensions of credit by any bank to any person outstanding at one
449 time and not fully secured, as determined in a manner consistent with Subsection (2), by collateral
450 having a market value at least equal to the amount of the loan or extension of credit may not
451 exceed 15% of the amount of the bank's total capital.

452 (2) (a) The total loans and extensions of credit by a bank to a person outstanding at one
453 time and fully secured by readily marketable collateral having a market value, as determined by
454 reliable and continuously available price quotations, at least equal to the amount of the funds
455 outstanding may not exceed 10% of the total capital of the bank. [~~This~~]

456 (b) The limitation of Subsection (2)(a) is separate from and in addition to the limitation
457 described in Subsection (1).

458 (3) (a) The limitations contained in Subsections (1) and (2) are subject to exceptions the
459 commissioner may prescribe by [~~regulation. No such regulation may~~] rule.

460 (b) A rule made under this section may not be inconsistent with law and regulations
461 applicable to loan restrictions on national banks.

462 (4) (a) The commissioner may, by rule ~~[or regulation]~~, define the terms "loans and
463 extensions of credit" and "person" as used in this section. ~~[These]~~

464 (b) The definitions described under Subsection (4)(a) may not be inconsistent with those
465 applicable to national banks.

466 Section 9. Section **7-3-20** is amended to read:

467 **7-3-20. Bank acquiring, holding, or accepting as collateral its own stock -- Loans to**
468 **or investment in affiliates.**

469 (1) ~~[No]~~ (a) A bank may not accept as collateral or ~~[be a purchaser of shares of]~~ acquire
470 its own ~~[capital]~~ stock except ~~[in cases where]~~ when the taking of the collateral or ~~[purchase]~~
471 acquisition of the ~~[shares]~~ stock is necessary to prevent loss upon a debt previously contracted in
472 good faith. ~~[In such a case all shares of the stock acquired by any bank through any purchase,~~
473 ~~foreclosure, or otherwise shall be sold]~~

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

476 (c) The ~~[par]~~ value of all the ~~[shares]~~ stock held after acceptance or ~~[purchase]~~ acquisition
477 may not exceed 10% of the total capital ~~[and surplus]~~ of ~~[such]~~ the bank.

478 (2) ~~[No]~~ (a) A bank may ~~[-(a)]~~ not:

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

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

482 (iii) accept the capital stock, bonds, debentures, or other obligations of any affiliate as
483 collateral security for advances made to any person unless authorized by the commissioner by
484 ~~[regulation to do so. This]~~ order.

485 (b) The exception of Subsection (2)(a)(iii) may not be inconsistent with similar exceptions
486 applicable to national banks under federal law.

487 Section 10. Section **7-3-40** is enacted to read:

488 **7-3-40. Board of Bank Advisors.**

489 (1) There is created a Board of Bank Advisors consisting of five members to be appointed
490 by the governor as follows:

491 (a) each member of the board shall be an individual who is familiar with and associated
492 with banks organized under this chapter; and

- 493 (b) at least three of the members of the board shall be individuals who:
494 (i) have had three or more years experience as a bank executive officer; and
495 (ii) are selected from a list submitted to the governor by an association in this state
496 representing commercial banks.
- 497 (2) (a) The board shall meet quarterly.
498 (b) Subject to Subsection (2)(a), meetings of the board shall be held on the call of the
499 chair.
- 500 (3) The members of the board shall elect the chair of the board each year from the
501 membership of the advisory board by a majority of the members present at the board's first meeting
502 each year.
- 503 (4) (a) Except as required by Subsection (4)(b), as terms of current board members expire,
504 the governor shall appoint each new member or reappointed member to a four-year term.
505 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time
506 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
507 members are staggered so that approximately half of the board is appointed every two years.
- 508 (5) When a vacancy occurs in the membership of the board for any reason, the replacement
509 shall be appointed for the unexpired term.
- 510 (6) All members shall serve until their successors are appointed and qualified.
- 511 (7) (a) Members shall receive no compensation or benefits for their services, but may
512 receive per diem and expenses incurred in the performance of the member's official duties at the
513 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 514 (b) Members may decline to receive per diem and expenses for their service.
- 515 (8) A majority of the members of the board shall constitute a quorum.
- 516 (9) The board has the duty to advise the governor and commissioner on problems relating
517 to banks organized under this chapter and to foster the interest and cooperation of banks in the
518 improvement of their services to the people of the state.
- 519 Section 11. Section **7-5-5** is amended to read:
520 **7-5-5. Revocation of trust authority -- Procedure.**
521 (1) (a) The commissioner may issue and serve upon a trust company a notice of intent to
522 revoke the authority of the trust company to exercise the powers granted by this chapter, if, in [his]
523 the commissioner's opinion:

524 (i) the trust company is unlawfully or unsoundly exercising the powers granted under this
525 chapter;

526 (ii) has unlawfully or unsoundly exercised the powers granted under this chapter;

527 (iii) has failed, for a period of five consecutive years, to exercise the powers granted by
528 this chapter;

529 (iv) fails or has failed to comply with requirements upon which its permit is conditioned;

530 or

531 (v) fails or has failed to comply with any rule of the commissioner.

532 (b) The notice shall:

533 (i) contain a statement of the facts constituting the alleged unlawful or unsound exercise
534 of powers, or failure to exercise powers, or failure to comply~~[-]~~; and ~~shall~~

535 (ii) fix the time and place at which a hearing will be held to determine whether an order
536 revoking authority to execute those powers should issue against the trust company.

537 (2) (a) If the trust company or its representative does not appear at the hearing, the
538 commissioner may consider the trust company to be in default, and may issue a revocation order.

539 (b) If default has occurred, or if upon the record made at any hearing the commissioner
540 finds that any allegation specified in the notice of charges has been established, the commissioner
541 shall issue and serve upon the trust company an order:

542 (i) prohibiting it from accepting any new or additional trust accounts; and

543 (ii) revoking its authority to exercise any powers granted under this chapter.

544 (c) Any order issued under this section permits the trust company to continue to service
545 all previously accepted trust accounts pending their expeditious divestiture or termination.

546 (3) A revocation order shall become effective 30 days after service of the order upon the
547 trust company and shall remain effective and enforceable, unless it is stayed, modified, terminated,
548 or set aside by action of the commissioner or by ~~[a reviewing court]~~ judicial review as provided
549 for in Section 7-1-714.

550 Section 12. Section **7-9-23** is amended to read:

551 **7-9-23. Supervisory committee -- Duties -- Suspension or removal of officer, director,**
552 **or credit committee member.**

553 (1) (a) Appointees to the supervisory committee shall hold office until the next annual
554 meeting of the members and until successors are appointed.

555 **(b)** One member of the board of directors, except the chair of the board and the president,
556 may be appointed to the supervisory committee.

557 **(c)** The president and other employees of the credit union may not be appointed to the
558 supervisory committee.

559 **(2)** (a) The commissioner may remove any member of the supervisory committee for:

560 (i) any violation of this chapter or the bylaws of the credit union;

561 (ii) failure to fulfill the duties of office;

562 (iii) malfeasance; or

563 (iv) maladministration in office.

564 **(b)** The board of directors shall fill any vacancy created by removal of a supervisory
565 committee member.

566 **(3)** It is the duty of the supervisory committee to:

567 (a) make or cause to be made an examination of the affairs of the credit union at least
568 annually, including an inspection of the credit union's books, securities, cash, accounts, and loans;

569 (b) investigate or cause to be investigated any complaint that action by the credit union,
570 board of directors, committees, officers, or employees does not comply with the law or the credit
571 union's bylaws;

572 (c) make or cause to be made supplemental audits and examinations it considers necessary,
573 or as required by the commissioner or board of directors;

574 (d) make a written report to the board of directors of its findings following each audit or
575 examination; and

576 (e) make or cause to be made [~~annually~~] a verification of member accounts[~~;~~];

577 (i) annually by statistical sampling or otherwise, in accordance with generally accepted
578 accounting principles[~~, including~~]; or

579 (ii) at least every two years by a complete verification [~~at least every two years~~].

580 **(4)** (a) The supervisory committee may, by majority vote, recommend to the board of
581 directors:

582 (i) the suspension or removal of a credit union officer or a member of the credit
583 committee; or

584 (ii) any other action the board of directors could lawfully take.

585 (b) Within 30 days after submission of the recommendation to the board of directors, if

586 the board fails to adopt the material aspects of the recommendation, the supervisory committee
587 may, by unanimous vote and after notifying the commissioner, call a meeting of the credit union
588 members to consider the recommendation. The members may, by majority vote of those present
589 at the meeting, adopt the supervisory committee's recommendation.

590 (5) (a) The supervisory committee may, by unanimous vote, suspend or remove a director
591 for any violation of this chapter or the bylaws of the credit union, malfeasance, or
592 maladministration in office.

593 (b) Within 30 days after the suspension or removal of a director, the supervisory
594 committee shall, after notifying the commissioner, call a special meeting to present the matter to
595 the membership of the credit union. The members may, by majority vote of those present, ratify
596 or reject the action of the supervisory committee. If the members vote to remove the director, they
597 may at the same meeting elect a replacement. If the members vote to reject the suspension or
598 removal, they shall reinstate the director.

599 (6) The bylaws may prescribe other duties and responsibilities of the supervisory
600 committee.

601 Section 13. Section **7-18a-207** is amended to read:

602 **7-18a-207. Annual renewal of certificate of authority.**

603 (1) A foreign depository institution may renew a certificate of authority, issued under
604 Section 7-18a-202, to transact business in this state through an agency, branch, or representative
605 office in a form prescribed by the commissioner.

606 (2) The application for renewal shall be submitted to the department no later than 60 days
607 before the expiration of the certificate of authority.

608 (3) The certificate of authority may be renewed by the commissioner upon a determination,
609 with or without examination, that the foreign depository institution:

610 (a) is in a safe and sound condition; and

611 (b) has complied with applicable provisions of the law.

612 (4) An application for renewal of certificate of authority shall be accompanied by the
613 annual fee required by Subsection 7-1-401[(6)](5).

Legislative Review Note

as of 2-1-00 8:21 AM

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

Office of Legislative Research and General Counsel