

**CREDIT UNIONS AND CREDIT
ASSOCIATION - TAXATION**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: John W. Hickman

This act modifies the Financial Institutions Code and the Revenue and Taxation Code to provide for designation of certain credit unions as credit associations and to provide for taxation of certain credit unions and credit associations.

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

AMENDS:

7-9-3, as last amended by Chapter 329, Laws of Utah 1999

7-9-11, as last amended by Chapter 329, Laws of Utah 1999

7-9-12, as last amended by Chapter 329, Laws of Utah 1999

7-9-34, as last amended by Chapter 178, Laws of Utah 1994

7-9-39, as last amended by Chapter 329, Laws of Utah 1999

7-9-39.5, as enacted by Chapter 329, Laws of Utah 1999

7-9-51, as enacted by Chapter 329, Laws of Utah 1999

7-9-52, as enacted by Chapter 329, Laws of Utah 1999

7-9-53, as enacted by Chapter 329, Laws of Utah 1999

7-9-54, as enacted by Chapter 329, Laws of Utah 1999

59-7-102, as last amended by Chapter 331, Laws of Utah 1997

59-7-104, as repealed and reenacted by Chapter 169, Laws of Utah 1993

59-7-106, as last amended by Chapter 4, Laws of Utah 1996, Second Special Session

ENACTS:

7-9-55, Utah Code Annotated 1953

7-9-56, Utah Code Annotated 1953

7-9-57, Utah Code Annotated 1953



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

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

30 **7-9-3. Definitions.**

31 As used in this chapter:

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

33 (a) has a similar:

34 (i) interest;

35 (ii) profession;

36 (iii) occupation; or

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

38 (b) is employed by a common employer.

39 (2) "Capital and surplus" means:

40 (a) shares;

41 (b) deposits;

42 (c) reserves; and

43 (d) undivided earnings.

44 (3) "Corporate credit union" means any credit union organized pursuant to any state or
45 federal act for the purpose of serving other credit unions.

46 (4) "Credit association" means a credit union that is designated as a credit association
47 pursuant to Section 7-9-55.

48 [~~(4)~~] (5) "Deposits" means that portion of the capital paid into the credit union by members
49 on which a specified rate of interest will be paid.

50 [~~(5)~~] (6) "Immediate family" means in relationship to a member:

51 (a) parents[;];

52 (b) a spouse[;];

53 (c) surviving spouse[;];

54 (d) children[;]; and

55 (e) siblings [~~of the member~~].

56 [~~(6)~~] (7) "Limited field of membership" means persons designated as eligible for credit
57 union membership in accordance with Section 7-9-51 or 7-9-53.

58 [~~(7)~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit, the

59 proceeds of which will be used for:

- 60 (i) a commercial purpose;
- 61 (ii) other business investment property or venture purpose; or
- 62 (iii) an agricultural purpose.

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

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

66 (ii) that is fully secured by:

- 67 (A) shares or deposits in the credit union making the extension of credit; or
- 68 (B) deposits in other financial institutions;

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

- 71 (A) the federal government;
- 72 (B) a state; or
- 73 (C) a political subdivision of a state; or
- 74 (iv) that is granted by a corporate credit union to another credit union.

75 [~~8~~] 9 "Service center" means a single location at which multiple credit unions can
76 provide products or services directly to their members.

77 [~~9~~] 10 "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from
78 which owners are permitted to make withdrawals by negotiable or transferable instruments or other
79 orders for the purpose of making transfers to other persons or to the owner.

80 [~~10~~] 11 "Shares" means that portion of the capital paid into the credit union by
81 members on which dividends may be paid.

82 Section 2. Section **7-9-11** is amended to read:

83 **7-9-11. Bylaws and amendments to be approved.**

84 (1) A credit union may not receive payments on shares, deposits, or certificates, or make
85 any loans or other transactions, until its bylaws have been approved in writing by the
86 commissioner.

87 (2) An amendment to a credit union's bylaws does not become operative until the
88 amendment to the bylaws is approved by the commissioner.

89 (3) (a) If the amendment to the bylaws of a credit union expands the limited field of

90 membership of a credit union as described in Subsection 7-9-52(1), the commissioner's approval
91 of the amendment is subject to Section 7-9-52.

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

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

99 (d) If the amendment to the bylaws of a credit union designated as a credit association
100 expands the limited field of membership of the credit association as provided in Section 7-9-57,
101 the commissioner's approval of the amendment is subject to Section 7-9-57.

102 Section 3. Section **7-9-12** is amended to read:

103 **7-9-12. Contents of bylaws.**

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

105 (1) the name of the credit union;

106 (2) the purpose for which it was formed;

107 (3) a limited field of membership of the credit union that:

108 (a) complies with Section 7-9-51 or 7-9-53; or

109 (b) if the credit union is designated as a credit association under Section 7-9-55, complies
110 with Section 7-9-57 in addition to Section 7-9-51 or 7-9-53;

111 (4) the number of directors and procedures for their election;

112 (5) the term of directors;

113 (6) whether a credit manager, credit committee, or combination of both shall be
114 responsible for credit functions of the credit union;

115 (7) the duties of the officers;

116 (8) the time of year of the annual meeting of members;

117 (9) the manner in which members shall be notified of meetings;

118 (10) the number of members which shall constitute a quorum at meetings;

119 (11) the manner of amending;

120 (12) the manner in which officers may act as surety; and

121 (13) such other matters, rules, and regulations as the board of directors consider necessary.

122 Section 4. Section **7-9-34** is amended to read:

123 **7-9-34. Tax exemption of credit unions.**

124 (1) Except as otherwise provided in this section, a credit [unions] union organized under
125 this chapter or prior law ~~[are]~~ is exempt from taxation.

126 (2) Any real property or any tangible personal property owned by ~~[the]~~ a credit union ~~[shall~~
127 ~~be]~~ is subject to taxation to the same extent as other similar property is taxed.

128 (3) For purposes of ~~[the]~~ state corporate franchise and income tax, Section 59-7-102
129 governs the taxation of:

130 (a) a credit [unions shall be governed by Section 59-7-102:] union; or

131 (b) credit union designated as credit association.

132 (4) This section does not exempt a credit [unions] union from:

133 (a) sales or use taxes[;]; or

134 (b) fees owed to the department in accordance with this title and rules of the department.

135 Section 5. Section **7-9-39** is amended to read:

136 **7-9-39. Voluntary merger.**

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

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

141 (b) the commissioner approves the merger plan;

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

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

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

151 (2) Upon merger, the chair of the board and secretary of each credit union shall execute,

152 and file with the department, a certificate of merger setting forth:

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

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

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

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

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

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

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

161 or

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

163 (3) On the effective date of any merger:

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

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

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

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

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

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

180 (b) If the surviving credit union is designated as a credit association in accordance with
181 Section 7-9-55 before the merger, the surviving credit association may not serve a limited field of
182 membership that is larger than the limited field of membership that the surviving credit association

183 could serve through expansion of its limited field of membership under Section 7-9-57 if the
184 merger is considered as a request under Section 7-9-57 to expand the surviving credit association's
185 limited field of membership filed on the date the merger becomes effective.

186 ~~[(b) The]~~ (c) (i) If the commissioner makes the finding described in Subsection (5)(c)(ii),
187 the commissioner may under Subsection (1)(b) approve a merger plan that:

188 (A) includes the addition of the residents of a county in the limited field of membership
189 of the merging credit union to the limited field of membership of the surviving credit union; or

190 (B) if the surviving credit union is designated as a credit association in accordance with
191 Section 7-9-55 before the merger, includes a limited field of membership of the surviving credit
192 association that is larger than is permitted under Subsection (5)(b).

193 (ii) The commissioner may take an action described in Subsection (5)(c)(i), if the
194 commissioner finds that:

195 ~~[(i) (A)]~~ (A) the expansion of the limited field of membership of the surviving credit union is
196 necessary for that credit union's safety and soundness; and

197 ~~[(i) (B)]~~ (B) the expanded limited field of membership of the surviving credit union meets the
198 criteria stated in Subsection 7-9-52(3)(c).

199 (6) [H] (a) This Subsection (6) applies to the surviving credit union if:

200 (i) the commissioner approves a merger plan under Subsection (5)~~[(b)](c)(i)(A)~~ under
201 which the surviving credit union's limited field of membership after the merger will include
202 residents of more than one county~~[-Subsections (6)(a) through (e) apply to the surviving credit~~
203 union.]; and

204 (ii) the surviving credit union is not designated as a credit association in accordance with
205 Section 7-9-55.

206 ~~[(a) (b)]~~ (b) The domicile-county of the surviving credit union is:

207 (i) if the credit union does not have a limited field of membership under Subsection
208 7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of
209 branches as of the date the merger is effective; or

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

212 ~~[(b) (c)]~~ (c) Within the surviving credit union's domicile-county, the surviving credit union
213 may establish, relocate, or otherwise change the physical location of the credit union's:

- 214 (i) main office; or
- 215 (ii) branch.

216 ~~[(e)]~~ (d) Within a county other than the domicile-county that is in the limited field of
 217 membership of the surviving credit union after the merger, the surviving credit union may not:

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

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

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

225 ~~[(d)]~~ (e) After the merger, the surviving credit union may admit as a member:

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

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

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

230 (B) resides in the domicile-county of the surviving credit union, as defined in Section
 231 7-9-53.

232 ~~[(e)]~~ (f) In addition to any requirement under this Subsection (6), a surviving credit union
 233 shall comply with any requirement under this title for the establishment, relocation, or change in
 234 the physical location of a main office or branch of a credit union.

235 (7) (a) This Subsection (7) applies to the surviving credit association if the commissioner
 236 approves a merger plan under Subsection (5)(c)(i)(B).

237 (b) (i) Within a county other than a county described in Subsection (7)(b)(ii), the surviving
 238 credit association may not:

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

241 (B) participate in a service center in which the surviving credit association did not
 242 participate as of the date the merger is effective; or

243 (C) relocate a main office or branch of the surviving credit association that was located
 244 in a county within the limited field of membership of the surviving credit association as of the date

245 the merger is effective unless the commissioner finds that the main office or branch is being
 246 relocated within a three-mile radius of the original location of the main office or branch.

247 (ii) Subsection (7)(b)(i) does not apply to:

248 (A) the credit association's domicile-county, if the credit association has a grandfathered
 249 limited field of membership;

250 (B) a county whose residents are added to the limited field of membership of the credit
 251 association pursuant to Section 7-9-57; or

252 (C) a county from which the restrictions on branching under Section 7-9-53 on the county
 253 have been removed under Section 7-9-57.

254 (c) After the merger, the surviving credit association may admit as a member a person in
 255 the surviving credit association's limited field of membership after the date the merger is effective.

256 (d) In addition to any requirement under this Subsection (7), a surviving credit association
 257 shall comply with any requirement under this title for the establishment, relocation, or change in
 258 the physical location of a main office or branch of a credit union.

259 Section 6. Section **7-9-39.5** is amended to read:

260 **7-9-39.5. Supervisory merger.**

261 If a credit union is merged with another credit union as a result of a supervisory action
 262 under Chapter 2 or 19, the commissioner may permit the surviving credit union to have a limited
 263 field of membership that is larger than a limited field of membership permitted under:

264 (1) Section 7-9-51[-]; or

265 (2) with respect to a credit union designated as a credit association in accordance with
 266 Section 7-9-51, 7-9-55, or 7-9-57.

267 Section 7. Section **7-9-51** is amended to read:

268 **7-9-51. Limited field of membership.**

269 (1) Except as provided in Subsection (3), the limited field of membership of a credit union
 270 may include only the following:

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

272 (b) the employees of the credit union;

273 (c) residents of a single county; and

274 (d) one or more associations.

275 (2) A credit union may have a limited field of membership that is more restrictive than the

276 limited field of membership described in Subsection (1).

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

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

281 (b) is approved by the commissioner after a merger under ~~[Subsection]~~ Section
282 7-9-39[~~(5)~~]; [or]

283 (c) is permitted by the commissioner after a merger in accordance with Section 7-9-39.5[-];
284 or

285 (d) is expanded under Section 7-9-57 for a credit union that is designated as a credit
286 association.

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

290 Section 8. Section **7-9-52** is amended to read:

291 **7-9-52. Expansion of a limited field of membership.**

292 (1) ~~[The]~~ Except as otherwise permitted in Section 7-9-57 with respect to a credit union
293 designated as a credit association, the commissioner shall comply with Subsection (2) if the
294 commissioner receives a request to approve an amendment to the bylaws of a credit union that
295 expands the credit union's limited field of membership to include:

296 (a) residents of one county; or

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

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

299 (a) give notice of the request in the manner and to the extent the commissioner considers
300 appropriate to institutions subject to the jurisdiction of the department that:

301 (i) are located in the county, if the limited field of membership is being expanded to
302 include residents of a county; or

303 (ii) serve or may serve the association described in Subsection (1)(b), if that association
304 is being added to the limited field of membership; and

305 (b) cause a supervisor to examine and submit written findings and recommendations to
306 the commissioner as to:

307 (i) whether the credit union is adequately capitalized;

308 (ii) whether the credit union has the financial capacity to serve the financial needs of the

309 expanded limited field of membership in a safe and sound manner;

310 (iii) whether the credit union has the managerial expertise to serve the financial needs of

311 the expanded limited field of membership in a safe and sound manner;

312 (iv) any potential harm the expansion of the limited field of membership may have on the

313 institutions described in Subsection (2)(a); and

314 (v) the probable beneficial effect of the expansion.

315 (3) The commissioner may approve the amendment to the bylaws described in Subsection

316 (1) if the commissioner:

317 (a) has given the notice required under Subsection (2)(a);

318 (b) received the written findings and recommendations of the supervisor under Subsection

319 (2)(b); and

320 (c) finds that:

321 (i) the credit union is adequately capitalized;

322 (ii) the credit union has the financial capacity to serve the financial needs of the expanded

323 limited field of membership in a safe and sound manner;

324 (iii) the credit union has the managerial expertise to serve the financial needs of the

325 expanded limited field of membership in a safe and sound manner; and

326 (iv) any potential harm the expansion of the limited field of membership may have on

327 other institutions subject to the jurisdiction of the department does not clearly outweigh the

328 probable beneficial effect of the expansion.

329 (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the

330 expansion of a credit union's limited field of membership.

331 (5) ~~[This]~~ (a) Except as provided in Subsection (5)(b), this section may not be interpreted

332 to permit a credit union to:

333 ~~[(a)]~~ (i) expand its limited field of membership to include residents of more than one

334 county; or

335 ~~[(b)]~~ (ii) change the county included in the limited field of membership of a credit union,

336 if any.

337 (b) This section does not limit the right of a credit union to:

338 (i) elect to be designated as a credit association in accordance with Section 7-9-55; or
339 (ii) after a credit union is designated as a credit association, to expand its limited field of
340 membership in accordance with Section 7-9-57.

341 Section 9. Section **7-9-53** is amended to read:

342 **7-9-53. Grandfathering.**

343 (1) As used in this [~~section and Section 7-9-54~~] chapter:

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

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

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

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

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

349 (ii) in which the credit union has located the greatest number of branches as of January 1,
350 1999.

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

353 (d) "Restrictions on branching" mean a restriction under this section on:

354 (i) establishing, relocating, or changing the physical location of a main office or branch
355 of a credit union; or

356 (ii) participating in a service center.

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

359 (a) if the limited field of membership stated in the bylaws of the credit union as of January
360 1, 1999, complies with Section 7-9-51, the credit union's limited field of membership is the limited
361 field of membership indicated in its bylaws;

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

364 (A) the limited field of membership stated in the bylaws of the credit union as of January
365 1, 1999, includes the residents of more than one county; and

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

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

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

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

371 (B) the employees of the credit union;

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

373 as of January 1, 1999, and

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

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

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

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

382 (C) as a result of a merger pursuant to a supervisory action under Chapter 2 or 19 that is
383 effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a branch
384 in a county in the limited field of membership of the credit union and the credit union did not have
385 a branch in the county before the merger;

386 (ii) as of May 3, 1999, the limited field of membership of a credit union described in
387 Subsection (2)(c)(i) is the same limited field of membership that the credit union would have had
388 under Subsection (2)(d) except that the credit union:

389 (A) is not subject to Subsection (3); and

390 (B) is subject to Subsection (4)(b); and

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

393 (A) the limited field of membership stated in the bylaws of the credit union as of January
394 1, 1999, includes the residents of more than one county; and

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

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

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

- 400 (B) the employees of the credit union;
- 401 (C) residents of the credit union's domicile-county;
- 402 (D) the residents of any county other than the domicile-county:
- 403 (I) if, as of January 1, 1999, the county is in the limited field of membership of the credit
- 404 union; and
- 405 (II) in which, as of January 1, 1994, the credit union had located its main office or a
- 406 branch; and
- 407 (E) any association that as of January 1, 1999, is in the limited field of membership of the
- 408 credit union.
- 409 (3) If a credit union's limited field of membership is as described in Subsection (2)(d),
- 410 beginning May 3, 1999, the credit union:
- 411 (a) within the credit union's domicile-county, may establish, relocate, or otherwise change
- 412 the physical location of the credit union's:
- 413 (i) main office; or
- 414 (ii) branch;
- 415 (b) within a county other than a domicile-county that is in the credit union's grandfathered
- 416 limited field of membership, may not:
- 417 (i) establish a main office or branch that:
- 418 (A) was not located in the county as of January 1, 1999; or
- 419 (B) for which the credit union has not received by January 1, 1999, approval or conditional
- 420 approval of a site plan for the main office or branch from the planning commission of the
- 421 municipality where the main office or branch will be located;
- 422 (ii) participate in a service center in which it does not participate as of January 1, 1999;
- 423 or
- 424 (iii) relocate the credit union's main office or a branch located in the county as of January
- 425 1, 1999, unless the commissioner finds that the main office or branch is relocated within a
- 426 three-mile radius of where it was originally located; and
- 427 (c) may only admit as a member:
- 428 (i) a person in the credit union's grandfathered limited field of membership; or
- 429 (ii) a person belonging to an association that:
- 430 (A) is added to the limited field of membership of the credit union; and

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

432 (4) (a) If a credit union's limited field of membership is as described in Subsection (2)(b),
433 as of May 3, 1999, the credit union may operate as a credit union having a limited field of
434 membership under Section 7-9-51.

435 (b) If a credit union's limited field of membership is as described in Subsection (2)(c), as
436 of May 3, 1999, the credit union:

437 (i) within the credit union's domicile-county, may establish, relocate, or otherwise change
438 the physical location of the credit union's:

439 (A) main office; or

440 (B) branch;

441 (ii) within a county other than its domicile-county that is in the credit union's limited field
442 of membership under Subsection (2)(c), may not:

443 (A) establish a main office or branch that was not located in the county as of January 1,
444 1999;

445 (B) participate in a service center in which it does not participate as of January 1, 1999;
446 or

447 (C) relocate the credit union's main office or a branch located in the county as of January
448 1, 1999, unless the commissioner finds that the main office or branch is relocated within a
449 three-mile radius of where it was originally located; and

450 (iii) may only admit as a member:

451 (A) a person in the credit union's limited field of membership under Subsection (2)(c); or

452 (B) a person belonging to an association that is added to the limited field of membership
453 of the credit union, regardless of whether the association resides in the domicile-county of the
454 credit union.

455 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union
456 described in Subsection (2)(c) or (2)(d) may:

457 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but that
458 is not located in a county that is in the credit union's limited field of membership as of May 3,
459 1999; and

460 (ii) serve a member who is not in a credit union's limited field of membership as of May
461 3, 1999, if the member is a member of the credit union as of March 15, 1999.

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

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

466 (ii) for a credit union described in Subsection (2)(d), include in its limited field of
467 membership an association that:

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

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

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

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

476 (8) This section does not limit the right of a credit union to:

477 (a) elect to be designated as a credit association in accordance with Section 7-9-55; or

478 (b) after the credit union is designated as a credit association, to:

479 (i) expand its limited field of membership in accordance with Section 7-9-57; or

480 (ii) remove restrictions on branching in accordance with Section 7-9-57.

481 Section 10. Section **7-9-54** is amended to read:

482 **7-9-54. Electing to terminate grandfathering.**

483 (1) (a) In accordance with this section, a credit union that has a grandfathered limited field
484 of membership under Section 7-9-53 may terminate the grandfathering of the credit union's
485 grandfathered limited field of membership if, by no later than August 3, [~~1999~~] 2001, the credit
486 union has received approval from the commissioner in accordance with Section 7-9-11 of an
487 amendment to the bylaws of the credit union that establishes a limited field of membership in
488 compliance with Section 7-9-51.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

527 Section 11. Section **7-9-55** is enacted to read:

528 **7-9-55. Designation as a credit association.**

529 (1) In accordance with this section, a credit union may elect to be designated as a credit
530 association:

531 (a) through an affirmative vote of its members; and

532 (b) subject to approval from the commissioner.

533 (2) (a) If the board of directors seeks to have a credit union be designated as a credit
534 association, the board of directors shall initiate a proposition by a written resolution of the board
535 of directors.

536 (b) If one or more members of a credit union seek to have a credit union be designated as
537 a credit association, the one or more members of the credit union shall initiate a proposition by
538 submitting to the board of directors a petition signed by at least the lesser of:

539 (i) 50 members of the credit union; or

540 (ii) 5% of the credit union membership.

541 (3) Subject to Subsection (4), the proposition initiated under Subsection (2) shall:

542 (a) be subject to the vote of the full membership of the credit union; and

543 (b) submitted to the credit union membership pursuant to:

544 (i) this chapter;

545 (ii) the procedures of the credit union for membership votes; and

546 (iii) the rules made by the commissioner for membership votes of a credit union.

547 (4) (a) A credit union shall notify its members of the vote on the proposition initiated
548 under Subsection (2).

549 (b) The notice required under this Subsection (4) shall:

550 (i) be in a form approved by the commissioner; and

551 (ii) shall include:

552 (A) the proposition that the credit union be designated as a credit association; and

553 (B) an explanation that after designation as a credit association, the credit association is
554 subject to taxation under Title 59, Chapter 7, Corporate Franchise and Income Taxes.

555 (5) (a) If the proposition is approved by a vote of the credit union membership, the credit
556 union shall submit an application to be designated as a credit association to the commissioner in
557 a form prescribed by the commissioner.

558 (b) The application shall include the following:

559 (i) evidence that the credit union is adequately capitalized;

560 (ii) evidence that the credit union has the financial capacity to serve the financial needs of
561 the limited field of membership in a safe and sound manner;

562 (iii) evidence that the credit union has the managerial expertise to serve the financial needs
563 of the expanded limited field of membership in a safe and sound manner; and

564 (iv) any other information the commissioner considers material to determining whether
565 to approve the application.

566 (c) The commissioner shall approve the application:

567 (i) after accepting it as complete; and

568 (ii) finding that the credit union:

569 (A) is adequately capitalized;

570 (B) has the financial capacity to serve the financial needs of the limited field of
571 membership in a safe and sound manner; and

572 (C) has the managerial expertise to serve the financial needs of the expanded limited field
573 of membership in a safe and sound manner.

574 (d) To protect the safety and soundness of the application, the commissioner may:

575 (i) approve an application subject to the terms and conditions the commissioner considers
576 necessary; or

577 (ii) disapprove an application.

578 Section 12. Section **7-9-56** is enacted to read:

579 **7-9-56. Operations of credit associations.**

580 (1) A credit union designated as a credit association shall:

581 (a) comply with this chapter as a credit union, except where the chapter expressly provides
582 for a credit association; and

583 (b) is a credit union under this chapter that may obtain and maintain insurance on its shares
584 and deposits from the National Credit Union Association.

585 (2) If under Section 7-9-55 the credit union is designated as a credit association, within 90

586 days of the day the credit union is designated as a credit association:

587 (a) the name of the credit association shall be changed to replace the words "credit union"
588 with "credit association";

589 (b) an amendment to the credit union's articles of incorporation indicating the name change
590 shall be filed with the Division of Corporations and Commercial Code; and

591 (c) the credit association is prohibited from using the words "credit union" in its:

592 (i) advertisement;

593 (ii) signage;

594 (iii) solicitation for members; or

595 (iv) in any other correspondence and communication intended for members of the public.

596 Section 13. Section **7-9-57** is enacted to read:

597 **7-9-57. Expansion of credit association.**

598 (1) The commissioner shall comply with this section if the commissioner receives a
599 request to approve an amendment to the bylaws of a credit union designated as a credit association
600 that:

601 (a) expands the credit association's limited field of membership; or

602 (b) removes restrictions on branching if the credit association has a grandfathered limited
603 field of membership.

604 (2) (a) If the credit association requests to add residents within a county of the fourth, fifth,
605 or sixth class as classified in Section 17-50-501, the commissioner:

606 (i) may approve the addition of the residents within the county of the fourth, fifth, or sixth
607 class at any time;

608 (ii) may approve the addition of residents within more than one county of the fourth, fifth,
609 or sixth class in any one calendar year; and

610 (iii) shall comply with Subsection (4).

611 (b) If the credit association has a grandfathered limited field of membership and requests
612 the removal on the restrictions on branching under Section 7-9-53 on a county of the fourth, fifth,
613 or sixth class, the commissioner:

614 (i) may approve the removal of the restriction on branching within a county of the fourth,
615 fifth, or sixth class at any time;

616 (ii) may approve the removal of the restrictions on branching within more than one county

617 of the fourth, fifth, or sixth class in any one calendar year;

618 (iii) may approve the removal of the restrictions on branching regardless of whether the
619 commissioner has approved the addition of residents of a county of the fourth, fifth, or sixth class
620 to the limited field of membership of the credit association; and

621 (iv) shall comply with the requirements under this title for the establishment, relocation,
622 or change in the physical location of a main office or branch of a credit union to determine whether
623 to approve the removal of the restrictions on branching.

624 (3) (a) If the credit association requests to add residents within a county of the first,
625 second, or third class as classified in Section 17-50-501, the commissioner:

626 (i) in any one calendar year may:

627 (A) for a credit association that does not have a grandfathered limited field of membership,
628 approve the addition of residents within only one county of the first, second, or third class; or

629 (B) if the credit association is a credit association with a grandfathered limited field of
630 membership:

631 (I) approve the addition of residents within only one county of the first, second, or third
632 class; or

633 (II) remove the restrictions on branching in only one county of the first, second, or third
634 class as provided in Subsection (3)(b); and

635 (ii) shall comply with Subsection (4).

636 (b) If the credit association has a grandfathered limited field of membership and requests
637 the removal on the restrictions on branching under Section 7-9-53 on a county of the first, second,
638 or third class, the commissioner:

639 (i) may approve the removal of the restrictions on only one county of the first, second, or
640 third class in any one calendar year;

641 (ii) may not approve the addition of residents within a county of the first, second, or third
642 class to the limited field of membership of the credit association in the same calendar year the
643 commissioner removes the restrictions on branching in the county of the first, second, or third
644 class; and

645 (iii) shall comply with the requirements under this title for the establishment, relocation,
646 or change in the physical location of a main office or branch of a credit union to determine whether
647 to approve the removal of the restrictions on branching.

648 (4) (a) If the commissioner receives a request to add the residents within a county to the
649 limited field of membership of a credit association, the commissioner shall:

650 (i) give notice of the request in the manner and to the extent the commissioner considers
651 appropriate to institutions subject to the jurisdiction of the department that are located in the
652 applicable county; and

653 (ii) cause a supervisor to examine and submit written findings and recommendations to
654 the commissioner as to:

655 (A) whether the credit association is adequately capitalized;

656 (B) whether the credit association has the financial capacity to serve the financial needs
657 of the expanded limited field of membership in a safe and sound manner;

658 (C) whether the credit association has the managerial expertise to serve the financial needs
659 of the expanded limited field of membership in a safe and sound manner;

660 (D) any potential harm the expansion of the limited field of membership may have on the
661 institutions described in Subsection (4)(a)(i); and

662 (E) the probable beneficial effect of the expansion.

663 (b) The commissioner may approve the amendment to the bylaws described in Subsection
664 (1) or (2) if the commissioner:

665 (i) gives the notice required under this Subsection (4);

666 (ii) receives the written findings and recommendations of the supervisor under this
667 Subsection (4); and

668 (iii) finds that:

669 (A) the credit association is adequately capitalized;

670 (B) the credit association has the financial capacity to serve the financial needs of the
671 expanded limited field of membership in a safe and sound manner;

672 (C) the credit association has the managerial expertise to serve the financial needs of the
673 expanded limited field of membership in a safe and sound manner; and

674 (D) any potential harm the expansion of the limited field of membership may have on
675 other institutions subject to the jurisdiction of the department does not clearly outweigh the
676 probable beneficial effect of the expansion.

677 (5) If the credit association requests to add an association, the commissioner:

678 (a) may approve the addition of more than one association in any calendar year; and

679 (b) (i) if the association consists of 50 or more persons, shall comply with the procedure
 680 under Section 7-9-52 for adding an association to a credit union; or

681 (ii) (A) if the association consists of less than 50 persons, is not subject to Section 7-9-52;
 682 and

683 (B) shall approve the amendment if the commissioner finds:

684 (I) the credit association is adequately capitalized;

685 (II) the credit association has the financial capacity to serve the financial needs of the
 686 expanded limited field of membership in a safe and sound manner;

687 (III) the credit association has the managerial expertise to serve the financial needs of the
 688 expanded limited field of membership in a safe and sound manner; and

689 (IV) if the credit association is a credit association with a grandfathered limited field of
 690 membership, that the association resides in the domicile-county of the credit association.

691 (6) In accordance with Section 7-1-309, the commissioner may hold a hearing on the
 692 expansion of a credit association's limited field of membership.

693 (7) This section may not be interpreted to permit a credit union that is not designated as
 694 a credit association to:

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

696 or

697 (b) change the county included in the limited field of membership of a credit union, if any.
 698 Section 14. Section **59-7-102** is amended to read:

699 **59-7-102. Exemptions.**

700 (1) Except as provided in Part 8, the following are exempt from this chapter:

701 (a) ~~[organizations]~~ an organization exempt under Sections 501 and 521, Internal Revenue
 702 Code~~[-, and organizations]~~ except, for taxable years beginning on or after January 1, 2002, for:

703 (i) a credit union:

704 (A) organized under Title 7, Chapter 9, Utah Credit Union Act;

705 (B) that has a grandfathered limited field of membership under Section 7-9-53; or

706 (ii) a credit union designated as a credit association under Section 7-9-55;

707 (b) an organization meeting the requirements of Subchapter T, Internal Revenue Code;

708 ~~[(b) organizations]~~ (c) an organization exempt under Section 528, Internal Revenue Code,

709 provided that to the extent ~~[such]~~ the organization's income is taxable for federal tax purposes

710 under Section 528, ~~such~~ the organization's income is also taxable under this chapter;

711 ~~(c)~~ (d) an insurance [companies which are] company that is otherwise taxed on [their]
712 its premiums under Title 59, Chapter 9, Taxation of Admitted Insurers; and

713 ~~(d)~~ (e) a building [authorities] authority as defined in Section 17A-3-902.

714 (2) Notwithstanding any other provision in Chapter 7 or 8, a person not otherwise subject
715 to the tax imposed by this chapter or Chapter 8 ~~shall~~ may not become subject to the tax imposed
716 by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, by reason of:

717 (a) that person's ownership of tangible personal property located at the premises of a
718 printer's facility in this state with which the person has contracted for printing; or

719 (b) the activities of the person's employees or agents who are located solely at the premises
720 of a printer's facility and who are performing services related to quality control, distribution, or
721 printing services performed by the printer's facility in this state with which the person has
722 contracted for printing.

723 Section 15. Section **59-7-104** is amended to read:

724 **59-7-104. Tax -- Minimum tax.**

725 (1) Each domestic and foreign corporation, except those exempted under Section 59-7-102,
726 shall pay an annual tax to the state based on its Utah taxable income for the taxable year for the
727 privilege of exercising its corporate franchise or for the privilege of doing business in the state.

728 (2) ~~The~~ Except as provided in Subsection (4), the tax imposed by Subsection (1) shall
729 be 5% of a corporation's Utah taxable income.

730 (3) The minimum tax a corporation shall pay under this chapter is \$100.

731 (4) (a) As used in this Subsection (4):

732 (i) "state tax rate" means the rate imposed under Subsection (2); and

733 (ii) "taxable credit union" means:

734 (A) a credit union:

735 (I) organized under Title 7, Chapter 9, Utah Credit Union Act; and

736 (II) that has a grandfathered limited field of membership under Section 7-9-53; or

737 (B) a credit union designated as a credit association designated under Section 7-9-55.

738 (b) For taxable years beginning on or after January 1, 2002, a taxable credit union shall
739 pay an annual tax to the state equal to the product of:

740 (i) 38%; and

741 (ii) the taxable credit union's Utah taxable income.

742 (c) Notwithstanding the other provisions of this Subsection (4), if a taxable credit union

743 is subject to a federal income tax, the taxable credit union shall pay an annual tax to the state equal
744 to the product of:

745 (i) the state tax rate; and

746 (ii) the taxable credit union's Utah taxable income.

747 Section 16. Section **59-7-106** is amended to read:

748 **59-7-106. Subtractions from unadjusted income.**

749 In computing adjusted income the following amounts shall be subtracted from unadjusted
750 income:

751 (1) the foreign dividend gross-up included in gross income for federal income tax purposes
752 under Section 78, Internal Revenue Code;

753 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the
754 loss on the current Utah return. The deduction shall be made by claiming the deduction on the
755 current Utah return which shall be filed by the due date of the return, including extensions. For
756 the purposes of this subsection all capital losses in a given year must be:

757 (a) deducted in the year incurred; or

758 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code;

759 (3) the decrease in salary expense deduction for federal income tax purposes due to
760 claiming the federal jobs credit under Section 51, Internal Revenue Code;

761 (4) the decrease in qualified research and basic research expense deduction for federal
762 income tax purposes due to claiming the federal research and development credit under Section
763 41, Internal Revenue Code;

764 (5) the decrease in qualified clinical testing expense deduction for federal income tax
765 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue Code;

766 (6) any decrease in any expense deduction for federal income tax purposes due to claiming
767 any other federal credit;

768 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

769 (8) any income on the federal corporate return that has been previously taxed by Utah;

770 (9) amounts included in federal taxable income that are due to refunds of taxes imposed

771 for the privilege of doing business, or exercising a corporate franchise, including income,

772 franchise, corporate stock and business and occupation taxes paid by the corporation to Utah,
773 another state of the United States, a foreign country, a United States possession, or the
774 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income under
775 Section 59-7-105;

776 (10) charitable contributions, to the extent allowed as a subtraction under Section
777 59-7-109;

778 (11) (a) 50% of the dividends [~~deemed~~] considered received or received from subsidiaries
779 which are members of the unitary group and are organized or incorporated outside of the United
780 States unless such subsidiaries are included in a combined report under Section 59-7-402 or
781 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from
782 the dividends [~~deemed~~] considered received or received, the expense directly attributable to those
783 dividends. Interest expense attributable to excluded dividends shall be determined by multiplying
784 interest expense by a fraction, the numerator of which is the taxpayer's average investment in such
785 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
786 investment in assets;

787 (b) in determining income apportionable to this state, a portion of the factors of a foreign
788 subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be included in
789 the combined report factors. The portion to be included shall be determined by multiplying each
790 factor of the foreign subsidiary by a fraction, but not to exceed 100%, the numerator of which is
791 the amount of the dividend paid by the foreign subsidiary which is included in adjusted income,
792 and the denominator of which is the current year earnings and profits of the foreign subsidiary as
793 determined under the Internal Revenue Code;

794 (12) (a) 50% of the adjusted income of a foreign operating company unless the taxpayer
795 has elected to file a worldwide combined report as provided in Section 59-7-403. For purposes
796 of this subsection, when calculating the adjusted income of a foreign operating company, a foreign
797 operating company may not deduct the subtractions allowable under this subsection and
798 Subsection (11);

799 (b) in determining income apportionable to this state, the factors for a foreign operating
800 company shall be included in the combined report factors in the same percentage its adjusted
801 income is included in the combined adjusted income;

802 (13) the amount of gain or loss which is included in unadjusted income but not recognized

803 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
804 defined in Section 338, Internal Revenue Code, if an election has been made pursuant to Section
805 338(h)(10), Internal Revenue Code;

806 (14) the amount of gain or loss which is included in unadjusted income but not recognized
807 for federal purposes on stock sold, exchanged, or distributed by a corporation pursuant to Section
808 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has
809 been made for federal purposes;

810 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and
811 similar items due to a difference between basis for federal purposes and basis as computed under
812 Section 59-7-107; and

813 (b) if there has been a reduction in federal basis for a federal tax credit where there is no
814 corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an expense
815 in the year of the federal credit;

816 (16) any interest expense not deducted on the federal corporate return under Section 265(b)
817 or 291(e), Internal Revenue Code;

818 (17) 100% of the dividends received from subsidiaries which are insurance companies
819 exempt from this chapter under Subsection 59-7-102(1)[~~(e)~~](d) and are under "common
820 ownership" as defined by Subsection 59-7-101(7); and

821 (18) any amount included in unadjusted income that was derived from money paid by the
822 taxpayer to the program fund and investment income earned on those payments under Title 53B,
823 Chapter 8a, Higher Education Savings Incentive Program.

Legislative Review Note
as of 2-14-01 7:52 AM

This bill imposes a 38% tax on the Utah taxable income of certain types of Utah chartered credit unions but not all Utah credit unions. Under the federal and state constitutions, there are limitations on a legislature's ability to legislate on the basis of classifications if those classifications are too narrow. A legislature generally may only treat similarly situated persons differently if the legislature can establish a classification of those persons having a rational basis related to a legitimate government purpose. Legislatures are at times given greater deference to create classifications in the tax area. The distinction between those credit unions subject to the tax provided for in this bill and those that are not taxed generally turns on whether the credit union has multiple counties in its limited field of membership or the credit union has the ability to add multiple counties to its limited field of membership. It would be for a court to decide whether the classifications made in this bill are rationally based and therefore proper.

Office of Legislative Research and General Counsel