

Senator Lyle W. Hillyard proposes the following substitute bill:

1 **REGULATION OF CREDIT UNION SERVICE ORGANIZATIONS**
2 **AND OTHER CREDIT UNION RELATED ENTITIES**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lyle W. Hillyard**

6 **This act modifies the Financial Institution Title to address the regulation of credit union**
7 **service organizations by the Department of Financial Institutions. The act addresses the**
8 **jurisdiction of the department as it applies to credit union service organizations. This act**
9 **defines terms and addresses use of the terms. The act addresses participation**
10 **arrangements originated by a credit union service organization. The act addresses the**
11 **authority of the department to regulate the formation and activities of a credit union**
12 **service organization and to conduct examinations of credit union service organizations.**
13 **The act grants rulemaking authority to the department. The act restricts use of entities**
14 **other than credit union service organizations or loan production offices to provide**
15 **services to members of credit unions. The act provides for limited grandfathering. The**
16 **act makes technical changes. The act contains a coordination clause.**

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

18 AMENDS:

19 **7-1-501**, as last amended by Chapter 260, Laws of Utah 2000

20 **7-9-3**, as last amended by Chapter 329, Laws of Utah 1999

21 **7-9-5**, as last amended by Chapter 116, Laws of Utah 2001

22 ENACTS:

23 **7-9-55**, Utah Code Annotated 1953

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

25 Section 1. Section **7-1-501** is amended to read:



26 **7-1-501. Institutions and persons subject to jurisdiction of department.**
27 (1) ~~[The following]~~ As provided in this title and the rules of the department, the
28 persons and institutions described in Subsection (2) are subject to:
29 (a) the jurisdiction of the department ~~[and are subject to]; and~~
30 (b) supervision and examination by the department ~~[as provided in this title and the~~
31 ~~rules of the department.];~~
32 (2) Subsection (1) applies to:
33 ~~[(1)]~~ (a) all depository institutions chartered under the laws of this state, including any
34 out-of-state branches;
35 ~~[(2)]~~ (b) all Utah depository institutions chartered by the federal government, but only
36 to the extent the application of this title is authorized by:
37 ~~[(a)]~~ (i) federal law; or
38 ~~[(b)]~~ (ii) the appropriate federal regulatory agency;
39 ~~[(3)]~~ (c) all Utah branches of out-of-state depository institutions chartered under the
40 laws of another state;
41 ~~[(4)]~~ (d) all Utah branches of out-of-state depository institutions chartered by the
42 federal government, but only to the extent the application of this title is authorized by:
43 ~~[(a)]~~ (i) federal law; or
44 ~~[(b)]~~ (ii) the appropriate federal regulatory agency;
45 ~~[(5)]~~ (e) all service corporations and service organizations, including credit union
46 service organizations as defined in Section 7-9-3;
47 ~~[(6)]~~ (f) all trust companies;
48 ~~[(7)]~~ (g) all escrow companies;
49 ~~[(8)]~~ (h) all persons or institutions engaged in this state in the business of:
50 ~~[(a)]~~ (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other
51 accounts in depository institutions;
52 ~~[(b)]~~ (ii) operating a loan production office for:
53 (A) a Utah depository institution[;];
54 (B) an out-of-state depository institution[;]; or
55 (C) a foreign depository institution;
56 ~~[(e)]~~ (iii) allowing persons to effect third party payments from loan, charge, or other

57 accounts by checks, drafts, or other instruments or by electronic means; or

58 ~~[(4)]~~ (iv) a check casher, as defined in Section 7-23-102;

59 ~~[(9)]~~ (i) all corporations or other business entities owning or controlling an institution
60 subject to the jurisdiction of the department;

61 ~~[(10)]~~ (j) all subsidiaries and affiliates of an institution subject to the jurisdiction of the
62 department; and

63 ~~[(11)]~~ (k) any person or institution that, with or without authority to do so, transacts
64 business as, or holds itself out as being, a depository institution, trust company, or any other
65 person or institution described in this section as being subject to the jurisdiction of the
66 department.

67 Section 2. Section 7-9-3 is amended to read:

68 **7-9-3. Definitions.**

69 As used in this chapter:

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

71 (a) has a similar:

72 (i) interest;

73 (ii) profession;

74 (iii) occupation; or

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

76 (b) is employed by a common employer.

77 (2) "Capital and surplus" means:

78 (a) shares;

79 (b) deposits;

80 (c) reserves; and

81 (d) undivided earnings.

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

84 (4) "Credit union service organization" means an entity:

85 (a) that provides any of the services listed in Subsection 7-9-55(2); and

86 (b) in which a credit union organized under this chapter holds an ownership interest.

87 ~~[(4)]~~ (5) "Deposits" means that portion of the capital paid into the credit union by

88 members on which a specified rate of interest will be paid.

89 ~~[(5)]~~ (6) "Immediate family" means parents, spouse, surviving spouse, children, and
90 siblings of the member.

91 ~~[(6)]~~ (7) "Limited field of membership" means persons designated as eligible for credit
92 union membership in accordance with Section 7-9-51 or 7-9-53.

93 ~~[(7)]~~ (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,
94 the proceeds of which will be used for:

95 (i) a commercial purpose;

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

97 (iii) an agricultural purpose.

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

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

101 (ii) that is fully secured by:

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

103 (B) deposits in other financial institutions;

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

106 (A) the federal government;

107 (B) a state; or

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

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

110 ~~[(8) "Service center" means a single location at which multiple credit unions can
111 provide products or services directly to their members.]~~

112 (9) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from
113 which owners are permitted to make withdrawals by negotiable or transferable instruments or
114 other orders for the purpose of making transfers to other persons or to the owner.

115 (10) "Shares" means that portion of the capital paid into the credit union by members
116 on which dividends may be paid.

117 Section 3. Section **7-9-5** is amended to read:

118 **7-9-5. Powers of credit unions.**

119 In addition to the powers specified elsewhere in this chapter and subject to any
120 limitations specified elsewhere in this chapter, a credit union may:

- 121 (1) make contracts;
- 122 (2) sue and be sued;
- 123 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and
124 equipment as the directors consider necessary or incidental to the operation and business of the
125 credit union, but the value of the real property may not exceed 7% of credit union assets, unless
126 approved by the commissioner;
- 127 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in
128 whole or in part, necessary or incidental to its operation;
- 129 (5) incur and pay necessary and incidental operating expenses;
- 130 (6) require an entrance or membership fee;
- 131 (7) receive the funds of its members in payment for:
 - 132 (a) shares;
 - 133 (b) share certificates;
 - 134 (c) deposits;
 - 135 (d) deposit certificates;
 - 136 (e) share drafts;
 - 137 (f) NOW accounts; and
 - 138 (g) other instruments;
- 139 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
140 party with prior authorization in writing, including, but not limited to, drafts drawn on the
141 credit union for payment to the member or any third party, in accordance with the procedures
142 established by the board of directors, including, but not limited to, drafts, third-party
143 instruments, and other transaction instruments, as provided in the bylaws;
- 144 (9) charge fees for its services;
- 145 (10) extend credit to its members, at rates established in accordance with the bylaws or
146 by the board of directors;
- 147 (11) extend credit secured by real estate;
- 148 (12) make loan participation arrangements with other credit unions, credit union
149 service organizations, or financial organizations in accordance with written policies of the

150 board of directors, if the credit union or credit union service organization that originates a loan
151 for which participation arrangements are made retains an interest of at least 10% of the loan;

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

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

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

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

162 (17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

179 (25) act as trustee of funds permitted by federal law to be deposited in a credit union as
180 a deferred compensation or tax deferred device, including, but not limited to, individual

181 retirement accounts as defined by Section 408, Internal Revenue Code;

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

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

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

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

194 (a) the participation is not inconsistent with the law and rules of the department; and

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

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

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

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

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

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

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

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

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

211 (b) become a member of the credit union.

212 Section 4. Section 7-9-55 is enacted to read:

213 **7-9-55. Credit union service organizations -- Limitations on providing services**
214 **through other entities.**

215 (1) This section applies to a credit union service organization in which a credit union
216 organized under this chapter has an ownership interest.

217 (2) (a) A credit union service organization may provide a service only if the service is:

218 (i) (A) listed in Subsection (2)(b); or

219 (B) approved by the commissioner in accordance with Subsection (4)(b); and

220 (ii) (A) except for the extension of credit by the credit union service organization,

221 limited primarily to:

222 (I) credit unions that hold an ownership interest in the credit union service
223 organization;

224 (II) members of credit unions that hold an ownership interest in the credit union service
225 organization;

226 (III) members of credit unions that contract with the credit union service organization;

227 or

228 (IV) credit unions that contract with the credit union service organization but do not
229 hold an ownership interest in the credit union service organization; or

230 (B) for purposes of the extension of credit by the credit union service organization,
231 limited to members of a credit union that holds an ownership interest in the credit union service
232 organization.

233 (b) Subsection (2)(a) applies to:

234 (i) the following checking and currency services:

235 (A) check cashing;

236 (B) coin and currency services; and

237 (C) services related to:

238 (I) a money order;

239 (II) a savings bond;

240 (III) a travelers check; or

241 (IV) the purchase and sale of United States Mint commemorative coins;

242 (ii) the following clerical, professional, and management services:

- 243 (A) accounting services;
244 (B) courier services;
245 (C) credit analysis;
246 (D) facsimile transmission and copying services;
247 (E) services related to conducting an internal audit for a credit union;
248 (F) locator services;
249 (G) services related to management and personnel training and support;
250 (H) marketing services;
251 (I) research services; or
252 (J) services related to a supervisory committee audit;
253 (iii) consumer mortgage loan origination;
254 (iv) the following electronic transaction services:
255 (A) automated teller machine services;
256 (B) credit card services;
257 (C) debit card services;
258 (D) data processing services;
259 (E) electronic fund transfer services;
260 (F) services related to electronic income tax filings;
261 (G) payment item processing;
262 (H) wire transfer services; or
263 (I) cyber financial services;
264 (v) the following financial counseling services:
265 (A) developing and administering personnel benefit plans including:
266 (I) individual retirement accounts;
267 (II) Keogh plans; or
268 (III) deferred compensation plans;
269 (B) estate planning;
270 (C) financial planning and counseling;
271 (D) income tax preparation;
272 (E) investment counseling; or
273 (F) retirement counseling;

- 274 (vi) fixed asset services related to the:
- 275 (A) management, development, sale, or lease of fixed assets; or
- 276 (B) sale, lease, or servicing of computer hardware or software;
- 277 (vii) the following insurance brokerage or agency services:
- 278 (A) operating as an agency for sale of insurance;
- 279 (B) providing vehicle warranty programs; or
- 280 (C) providing group purchasing programs;
- 281 (viii) the following leasing services:
- 282 (A) leasing of personal property; or
- 283 (B) real estate leasing of excess credit union service organization property;
- 284 (ix) the following loan support services:
- 285 (A) debt collection services;
- 286 (B) loan processing, servicing, and sales; or
- 287 (C) sale of repossessed collateral;
- 288 (x) the extension of credit including member-business loans;
- 289 (xi) the following record retention, security, and disaster recovery services:
- 290 (A) alarm-monitoring and other security services;
- 291 (B) disaster recovery services;
- 292 (C) services related to:
- 293 (I) microfilm;
- 294 (II) microfiche;
- 295 (III) optical and electronic imaging; or
- 296 (IV) CD-ROM data storage retrieval;
- 297 (D) providing forms and supplies; or
- 298 (E) services related to record retention and storage;
- 299 (xii) securities brokerage services;
- 300 (xiii) operation of shared credit union branch services, including service centers;
- 301 (xiv) student loan origination;
- 302 (xv) travel agency services;
- 303 (xvi) the following trust and trust-related services:
- 304 (A) acting as an administrator for a prepaid legal service plan;

305 (B) acting in a fiduciary capacity including as:
306 (I) trustee;
307 (II) guardian;
308 (III) conservator; or
309 (IV) estate administrator; or
310 (C) trust services; or
311 (xvii) making credit union service organization investments in noncredit union service
312 organization service providers.

313 (3) (a) One or more credit unions organized under this chapter may form a credit union
314 service organization on or after the day on which each credit union forming the credit union
315 service organization obtains in accordance with this section the approval by the commissioner
316 for the formation of the credit union service organization.

317 (b) To obtain approval from the commissioner for the formation of a credit union
318 service organization, each credit union that is forming a credit union service organization shall
319 file an application with the commissioner that specifies:

320 (i) whether the credit union meets the capital and surplus standards established by rule
321 by the commissioner;

322 (ii) the services to be provided by the credit union service organization; and

323 (iii) any information required by rule by the commissioner.

324 (c) The commissioner may by rule establish the requirements for forming of a credit
325 union service organization to ensure that:

326 (i) the credit union service organization as formed:

327 (A) has the financial capacity to provide the services described in the application
328 requesting the formation of the credit union service organization in a safe and sound manner;
329 and

330 (B) has the managerial expertise to provide the services described in the application
331 requesting the formation of the credit union service organization in a safe and sound manner;
332 and

333 (ii) any potential harm that granting the approval may have on other institutions subject
334 to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of
335 the credit union service organization providing the services.

336 (4) (a) A credit union service organization may provide a service that is described in
337 Subsection (2)(b) but not listed in the application requesting the formation of the credit union
338 service organization by filing written notice with the commissioner at least 30 days before the
339 day on which the credit union service organization first provides the service.

340 (b) A credit union service organization may provide a service not described in
341 Subsection (2)(b) if:

342 (i) the credit union service organization files a written request for approval to provide
343 the service with the commissioner; and

344 (ii) the commissioner approves the credit union service organization providing that
345 service.

346 (c) The commissioner may at any time limit the services engaged in by a credit union
347 service organization on the basis of:

348 (i) a supervisory reason;

349 (ii) a legal reason; or

350 (iii) a safety and soundness reason.

351 (5) The commissioner may conduct examinations of a credit union service organization
352 in accordance with Section 7-1-314.

353 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
354 commissioner may make rules for purposes of this section:

355 (a) defining what constitutes an ownership interest held by a credit union;

356 (b) specifying the information required to be included in an application seeking to form
357 a credit union service organization;

358 (c) specifying in accordance with Subsection (3), the requirements for forming a credit
359 union service organization;

360 (d) specifying the procedure for obtaining approval to provide a service under
361 Subsection (4)(a); and

362 (e) specifying the conditions under which a credit union service organization may
363 provide a service described in Subsection (2).

364 (7) (a) Except as provided in Subsection (7)(b), a credit union may not provide any
365 service to a member of the credit union through:

366 (i) a person who is controlled by or is under common control with the credit union

367 whether or not the control is exercised:

368 (A) directly; or

369 (B) indirectly through one or more intermediary controls; or

370 (ii) an entity in which the credit union holds an ownership interest.

371 (b) Notwithstanding Subsection (7)(a), a credit union may provide services to a
372 member of a credit union:

373 (i) through a credit union service organization to the extent permitted by this section;

374 or

375 (ii) through a loan production office to the extent those services are authorized by
376 Section 7-1-715.

377 (c) Notwithstanding Section 7-1-103, for purposes of this section, "control" means the
378 power, directly, or indirectly, to:

379 (i) direct or exercise a controlling influence over:

380 (A) the management or policies of an entity; or

381 (B) the election of a majority of the directors or trustees of an entity;

382 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or

383 (iii) vote more than 5% of any class of voting securities of an entity by a person other
384 than an individual.

385 (d) Nothing within this section may be interpreted as prohibiting a credit union from
386 entering into a contract or agreement to provide services to members of the credit union if the
387 person with whom the credit union enters into the contract agreement is not a person described
388 in Subsection (7)(a).

389 (8) (a) A credit union holding an ownership interest in a credit union service
390 organization operating on May 5, 2003 is not required to file an application requesting to form
391 that credit union service organization.

392 (b) A credit union service organization operating on May 5, 2003:

393 (i) shall provide the commissioner written notice of the services the credit union
394 service organization provides by no later than July 1, 2003; and

395 (ii) may provide a service not described in Subsection (2)(b) on or after July 1, 2003
396 only if the credit union service organization has obtained approval from the commissioner in
397 accordance with Subsection (4).

398 Section 5. **Coordination clause.**

399 If this bill and H.B. 162, Amendments Related to Financial Institutions, or a substitute
400 of H.B. 162 both pass, it is the intent of the Legislature that the Office of Legislative Research
401 and General Counsel, in preparing the Utah Code database for publication, make the following
402 changes:

403 (1) the amendments in this bill to Subsection 7-9-3(4) shall supersede the amendments
404 to Subsection 7-9-3(4) in H.B. 162; and

405 (2) the amendments in H.B. 162 to Subsection 7-9-5(12) shall supersede the
406 amendments to Subsection 7-9-5(12) in this bill.