

**Senator John L. Valentine** proposes the following substitute bill:

**FINANCIAL INSTITUTIONS AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

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**LONG TITLE**

**General Description:**

This bill modifies the Financial Institutions Act to permit certain financial institutions to be organized as limited liability companies, to provide for industrial banks, and to provide for a study.

**Highlighted Provisions:**

This bill:

- ▶ provides the conditions under which specified financial institutions can be organized as or converted to a limited liability company;
- ▶ addresses application of corporate terminology to limited liability companies;
- ▶ changes references to industrial loan corporations to industrial banks;
- ▶ addresses formation and operation of industrial banks;
- ▶ provides grandfathering for nondepository industrial loan companies;
- ▶ provides for the study of whether specified financial institutions should be allowed to be organized as or convert to a limited liability company; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.



26 This bill provides revisor instructions.

27 **Utah Code Sections Affected:**

28 **AMENDS:**

- 29 **7-1-103**, as last amended by Chapter 260, Laws of Utah 2000
- 30 **7-1-201**, as last amended by Chapter 200, Laws of Utah 1994
- 31 **7-1-203**, as last amended by Chapter 176, Laws of Utah 2002
- 32 **7-1-207**, as last amended by Chapter 200, Laws of Utah 1994
- 33 **7-1-301**, as last amended by Chapter 184, Laws of Utah 1999
- 34 **7-1-324**, as enacted by Chapter 75, Laws of Utah 2003
- 35 **7-1-503**, as last amended by Chapter 49, Laws of Utah 1995
- 36 **7-1-701**, as last amended by Chapter 19, Laws of Utah 1997
- 37 **7-3-3**, as last amended by Chapter 49, Laws of Utah 1995
- 38 **7-8-3**, as last amended by Chapter 91, Laws of Utah 1997
- 39 **7-8-5**, as last amended by Chapter 200, Laws of Utah 1994
- 40 **7-8-7**, as last amended by Chapter 200, Laws of Utah 1994
- 41 **7-8-11**, as last amended by Chapter 200, Laws of Utah 1994
- 42 **7-8-12**, as last amended by Chapter 200, Laws of Utah 1994
- 43 **7-8-13**, as last amended by Chapter 200, Laws of Utah 1994
- 44 **7-8-14**, as last amended by Chapter 200, Laws of Utah 1994
- 45 **7-8-15**, as last amended by Chapter 200, Laws of Utah 1994
- 46 **7-8-16**, as last amended by Chapter 200, Laws of Utah 1994
- 47 **7-8-19**, as last amended by Chapter 200, Laws of Utah 1994
- 48 **7-8-20**, as enacted by Chapter 154, Laws of Utah 1993
- 49 **9-2-1923**, as enacted by Chapter 291, Laws of Utah 2003
- 50 **25-5-4**, as last amended by Chapter 182, Laws of Utah 1996
- 51 **31A-21-109**, as enacted by Chapter 75, Laws of Utah 2003
- 52 **67-4a-102**, as last amended by Chapter 248, Laws of Utah 1998
- 53 **75-6-101**, as enacted by Chapter 150, Laws of Utah 1975

54 **ENACTS:**

- 55 **7-1-810**, Utah Code Annotated 1953
- 56 **7-8-21**, Utah Code Annotated 1953

57 **Uncodified Material Affected:**

58 AMENDS UNCODIFIED MATERIAL:

59 **Uncodified Section 27, Chapter 327, Laws of Utah 2003**



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

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

63 **7-1-103. Definitions.**

64 As used in this title:

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

67 (b) "Bank" does not include:

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

69 (ii) a savings and loan association or savings bank subject to Chapter 7, Savings and

70 Loan Association Act;

71 (iii) an industrial [~~loan corporation~~] bank subject to Chapter 8, Industrial Banks;

72 (iv) a federally chartered credit union; or

73 (v) a credit union subject to Chapter 9, Utah Credit Union Act.

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

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

78 (b) "Branch" does not include:

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

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

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

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

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

84 (a) direct or exercise a controlling influence over;

85 (i) the management or policies of a financial institution[;]; or [~~over~~]

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

87 (b) vote 20% or more of any class of voting securities of a financial institution by an

88 individual; or

89 (c) vote more than 5% of any class of voting securities of a financial institution by a  
90 person other than an individual.

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

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

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

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

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

96 industrial [~~loan corporation~~] bank, credit union, or other institution that:

97 (a) holds or receives deposits, savings, or share accounts~~[-or]~~;

98 (b) issues certificates of deposit~~[-]~~; or

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

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

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

103 (A) has control over any depository institution; or [~~that~~]

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

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

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

111 (10) "Financial institution" means any institution subject to the jurisdiction of the  
112 department because of this title.

113 (11) (a) "Financial institution holding company" means a person, other than an  
114 individual that has control over any financial institution or any person that becomes a financial  
115 institution holding company under this chapter, including an out-of-state or foreign depository  
116 institution holding company.

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

119 (c) A person holding 5% or less of the voting securities of a financial institution is  
120 rebuttably presumed not to have control of the institution.

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

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

127 (13) "Foreign depository institution holding company" means the holding company of a  
128 foreign depository institution.

129 (14) "Home state" means:

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

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

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

135 (15) "Host state" means:

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

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

141 (16) "Industrial [~~loan corporation~~] bank" means a corporation or limited liability  
142 company conducting the business of an industrial [~~loan corporation~~] bank under Chapter 8,  
143 Industrial Banks.

144 (17) "Industrial loan company" is as defined in Section 7-8-21.

145 [~~(17)~~] (18) "Insolvent" means the status of a financial institution that is unable to meet  
146 its obligations as they mature.

147 [~~(18)~~] (19) "Institution" means:

148 (a) a corporation[;];

149 (b) a limited liability company[;];

150 (c) a partnership[;];

151 (d) a trust[;];

152 (e) an association[;];

153 (f) a joint venture[;];

154 (g) a pool[;];

155 (h) a syndicate[;];

156 (i) an unincorporated organization[;]; or

157 (j) any form of business entity.

158 [~~(19)~~] (20) "Institution subject to the jurisdiction of the department" means an  
159 institution or other person described in Section 7-1-501.

160 [~~(20)~~] (21) "Liquidation" means the act or process of winding up the affairs of an  
161 institution subject to the jurisdiction of the department by realizing upon assets, paying  
162 liabilities, and appropriating profit or loss, as provided in Chapters 2 and 19.

163 [~~(21)~~] (22) "Liquidator" means a person, agency, or instrumentality of this state or the  
164 United States appointed to conduct a liquidation.

165 [~~(22)~~] (23) (a) "Member of a savings and loan association" means:

166 (i) a person holding a savings account of a mutual association;

167 (ii) a person borrowing from, assuming, or becoming obligated upon a loan or an  
168 interest in a loan held by a mutual association; or

169 (iii) any person or class of persons granted membership rights by the articles of  
170 incorporation or the bylaws of an association.

171 (b) A joint and survivorship or other multiple owner or borrower relationship  
172 constitutes a single membership.

173 [~~(23)~~] (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

174 [~~(24)~~] (25) (a) "NOW account" means a savings account from which the owner may  
175 make withdrawals by negotiable or transferable instruments for the purpose of making transfers  
176 to third parties.

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

178 (c) Neither the owner of a NOW account nor any third party holder of an instrument  
179 requesting withdrawal from the account has a legal right to make withdrawal on demand.

180 [~~(25)~~] (26) "Out-of-state" means, in reference to a depository institution or depository

181 institution holding company, an institution or company whose home state is not Utah.

182 ~~[(26)]~~ (27) "Person" means:

183 (a) an individual[;];

184 (b) a corporation[;];

185 (c) a limited liability company[;];

186 (d) a partnership[;];

187 (e) a trust[;];

188 (f) an association[;];

189 (g) a joint venture[;];

190 (h) a pool[;];

191 (i) a syndicate[;];

192 (j) a sole proprietorship[;];

193 (k) an unincorporated organization[;]; or

194 (l) any form of business entity.

195 ~~[(27)]~~ (28) "Receiver" means a person, agency, or instrumentality of this state or the  
196 United States appointed to administer and manage an institution subject to the jurisdiction of  
197 the department in receivership, as provided in Chapters 2 and 19.

198 ~~[(28)]~~ (29) "Receivership" means the administration and management of the affairs of  
199 an institution subject to the jurisdiction of the department to conserve, preserve, and properly  
200 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in  
201 Chapters 2 and 19.

202 ~~[(29)]~~ (30) "Savings account" means any deposit or other account at a depository  
203 institution that is not a transaction account.

204 ~~[(30)]~~ (31) (a) "Savings and loan association" means any of the following subject to  
205 this title:

206 (i) a mutual or capital stock savings association[;];

207 (ii) a savings and loan association[;];

208 (iii) a mutual or capital stock savings bank[;]; or

209 (iv) a building and loan association [~~subject to this title, including~~].

210 (b) "Savings and loan association" includes the following as defined in Section 7-7-2:

211 (i) all federal associations; and

212 (ii) all out-of-state associations~~[, as defined in Section 7-7-2].~~

213 ~~[(31)]~~ (32) "Service corporation" or "service organization" means a corporation or  
214 other business entity owned or controlled by one or more financial institutions that is engaged  
215 or proposes to engage in business activities related to the business of financial institutions.

216 ~~[(32)]~~ (33) "State" means, unless the context demands otherwise~~[;]~~:

217 (a) a state~~[;]~~;

218 (b) the District of Columbia~~[;]~~; or

219 (c) the territories of the United States.

220 ~~[(33)]~~ (34) "Subsidiary" means a business entity under the control of an institution.

221 ~~[(34)]~~ (35) (a) "Transaction account" means a deposit, account, or other contractual  
222 arrangement in which a depositor, account holder, or other customer is permitted, directly or  
223 indirectly, to make withdrawals by:

224 (i) check or other negotiable or transferable instrument~~[, by]~~;

225 (ii) payment order of withdrawal~~[, by]~~;

226 (iii) telephone transfer~~[, by]~~;

227 (iv) other electronic means~~[;]~~; or ~~[by]~~

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

230 (b) "Transaction account" includes:

231 (i) demand deposits;

232 (ii) NOW accounts;

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

234 (iv) share draft accounts.

235 ~~[(35)]~~ (36) "Trust company" means a person authorized to conduct a trust business, as  
236 provided in Chapter 5, Trust Business.

237 ~~[(36)]~~ (37) "Utah depository institution" means a depository institution whose home  
238 state is Utah.

239 ~~[(37)]~~ (38) "Utah depository institution holding company" means a depository  
240 institution holding company whose home state is Utah.

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

242 **7-1-201. Creation of department -- Organization.**

243 (1) There is created the Department of Financial Institutions that is responsible for the  
244 execution of the laws of this state relating to all financial institutions and other persons subject  
245 to this title, and relating to the businesses they conduct.

246 (2) The department organization includes:

247 [(1)] (a) the commissioner of financial institutions, who shall be the chief executive  
248 officer of the department;

249 [(2)] (b) the Board of Financial Institutions;

250 [(3)] (c) the chief examiner;

251 [(4)] (d) the supervisor of banks;

252 [(5)] (e) the supervisor of savings and loan associations;

253 [(6)] (f) the supervisor of industrial [~~loan corporations~~] banks;

254 [(7)] (g) the supervisor of credit unions; and

255 [(8)] (h) other supervisors, examiners, and personnel as may be required to carry out  
256 the duties, powers, and responsibilities of the department.

257 Section 3. Section **7-1-203** is amended to read:

258 **7-1-203. Board of Financial Institutions.**

259 (1) There is created a Board of Financial Institutions consisting of the commissioner  
260 and the following five members, who shall be qualified by training and experience in their  
261 respective fields and shall be appointed by the governor with the consent of the Senate:

262 (a) one representative from the commercial banking business;

263 (b) one representative from the savings and loan, consumer lending, mortgage  
264 brokerage, or escrow agency business;

265 (c) one representative from the industrial [~~loan corporation~~] bank business;

266 (d) one representative from the credit union business; and

267 (e) one representative of the general public who, as a result of education, training,  
268 experience, or interest, is well qualified to consider economic and financial issues and data as  
269 they may affect the public interest in the soundness of the financial systems of this state.

270 (2) The commissioner shall act as chair.

271 (3) (a) All members of the board shall be residents of this state.

272 (b) No more than three members of the board may be from the same political party.

273 (c) No more than two members of the board may be connected with the same financial

274 institution or its holding company.

275 (d) A member may not participate in any matter involving any institution with which  
276 the member has a conflict of interest.

277 (4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years  
278 each expiring on July 1.

279 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
280 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
281 board members are staggered so that approximately half of the board is appointed every two  
282 years.

283 (c) All members serve until their respective successors are appointed and qualified.

284 (d) When a vacancy occurs in the membership for any reason, the replacement shall be  
285 appointed for the unexpired term.

286 (5) (a) The board shall meet at least quarterly on a date it sets.

287 (b) The commissioner or any two members of the board may call additional meetings.

288 (c) Four members constitute a quorum for the transaction of business.

289 (d) Actions of the board require a vote of a majority of those present.

290 (e) Meetings of the board and records of its proceedings are subject to Title 52, Chapter  
291 4, Open and Public Meetings, except for discussion of confidential information pertaining to a  
292 particular financial institution.

293 (6) (a) Each member of the board shall, by sworn or written statement filed with the  
294 commissioner, disclose any position of employment or ownership interest that the member has  
295 with respect to any institution subject to the jurisdiction of the department.

296 (b) The member shall:

297 (i) file ~~[this]~~ the statement required by this Subsection (6) when first appointed to the  
298 board; and ~~[shall]~~

299 (ii) subsequently file amendments to the statement if there is any material change in the  
300 matters covered by the statement.

301 (7) (a) (i) Members who are not government employees shall receive no compensation  
302 or benefits for their services, but may receive per diem and expenses incurred in the  
303 performance of the member's official duties at the rates established by the Division of Finance  
304 under Sections 63A-3-106 and 63A-3-107.

305 (ii) Members may decline to receive per diem and expenses for their service.  
306 (b) (i) State government officer and employee members who do not receive salary, per  
307 diem, or expenses from their agency for their service may receive per diem and expenses  
308 incurred in the performance of their official duties from the board at the rates established by the  
309 Division of Finance under Sections 63A-3-106 and 63A-3-107.

310 (ii) State government officer and employee members may decline to receive per diem  
311 and expenses for their service.

312 (8) The board shall advise the commissioner with respect to:

313 (a) the exercise of [~~his~~] the commissioner's duties, powers, and responsibilities under  
314 this title; and

315 (b) the organization and performance of the department and its employees.

316 (9) The board shall recommend annually to the governor and the Legislature a budget  
317 for the requirements of the department in carrying out its duties, functions, and responsibilities  
318 under this title.

319 Section 4. Section **7-1-207** is amended to read:

320 **7-1-207. Supervisor of industrial banks -- Responsibilities.**

321 (1) The commissioner shall designate an examiner as supervisor of industrial [~~loan~~  
322 ~~corporations~~] banks who shall be sufficiently qualified by training and experience in the  
323 business of industrial [~~loan corporations~~] banks or other financial institutions or as an  
324 employee of a state or federal agency supervising financial institutions to perform the duties of  
325 the office.

326 (2) (a) The supervisor of industrial [~~loan corporations~~] banks is responsible, subject to  
327 the direction and control of the commissioner, for the general supervision and examination of  
328 all industrial [~~loan corporations~~] banks subject to the jurisdiction of the department and other  
329 institutions as assigned.

330 (b) The supervisor shall:

331 (i) assist and advise the commissioner in the execution of the laws of this state relating  
332 to these institutions[~~;~~]; and [~~shall~~]

333 (ii) perform other duties prescribed in this title or assigned by the commissioner.

334 Section 5. Section **7-1-301** is amended to read:

335 **7-1-301. Powers and duties of commissioner -- Rulemaking.**

336 Without limiting the other powers, duties, and responsibilities specified in this title, the  
337 commissioner has all the functions, powers, duties, and responsibilities with respect to  
338 institutions, persons, or businesses subject to the jurisdiction of the department contained in  
339 this title, including all of the functions, powers, duties, and responsibilities described in  
340 Subsections (1) through (15).

341 (1) The commissioner may govern the administration and operation of the department.

342 (2) The commissioner may supervise the conduct, operation, management,  
343 examination, and statements and reports of examinations of financial institutions and other  
344 persons subject to the jurisdiction of the department.

345 (3) (a) The commissioner may authorize a state chartered depository institution to  
346 engage in any activity it could engage in, and to grant to that institution all additional rights,  
347 powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws  
348 of the United States.

349 (b) The commissioner may authorize a depository institution chartered by this state to  
350 engage in any activity that a Utah branch of an out-of-state depository institution of the same  
351 class can engage in, and to grant to the Utah institution all additional rights, powers, privileges,  
352 benefits, or immunities it needs to engage in the activity.

353 (c) In granting authority under this Subsection (3), the commissioner shall consider:

354 (i) the need for competitive equality between institutions chartered by this state and  
355 institutions operating in this state that are chartered by another state or by the federal  
356 government; and

357 (ii) the adverse effect on shareholders, members, depositors, and other customers of  
358 financial institutions chartered by this state if equal power and protection of those institutions,  
359 compared with federally chartered or out-of-state institutions of the same class, are not  
360 promptly available.

361 (4) The commissioner may safeguard the interest of shareholders, members, depositors,  
362 and other customers of institutions and other persons subject to the jurisdiction of the  
363 department.

364 (5) (a) The commissioner may establish criteria consistent with this title to be applied  
365 in granting applications for approval of:

366 (i) a new institution;

367 (ii) a new branch;  
368 (iii) the relocation of an office or branch;  
369 (iv) a merger;  
370 (v) a consolidation;  
371 (vi) a change in control of an institution or other person subject to the jurisdiction of  
372 the department; and

373 (vii) other applications specified in this title.

374 (b) The criteria established under Subsection (5)(a) may not be applied to make it more  
375 difficult for a state chartered institution to obtain approval of an application than for a federally  
376 chartered institution in the same class to obtain approval from the appropriate federal  
377 regulatory agency or administrator.

378 (6) (a) The commissioner may protect the privacy of the records of any institution  
379 subject to the jurisdiction of the department pertaining to a particular depositor or other  
380 customer of the institution. Rules adopted under this Subsection (6) shall be consistent with  
381 federal laws and regulations applicable to the institution.

382 (b) Any institution that consents to produce records or that is required to produce  
383 records in compliance with a subpoena or other order of a court of competent jurisdiction or in  
384 compliance with an order obtained pursuant to Sections 78-27-45 through 78-27-50.5 shall be  
385 reimbursed for the cost of retrieval and reproduction of the records by the party seeking the  
386 information. The commissioner may by rule establish the rates and conditions under which  
387 reimbursement is made.

388 (7) (a) The commissioner may classify all records kept by institutions subject to the  
389 jurisdiction of the department and to prescribe the period for which each class of records is  
390 retained.

391 (b) Rules adopted under this Subsection (7) for any class of financial institution shall  
392 be consistent with federal laws and regulations applicable to the class.

393 ~~[(b)]~~ (c) Rules made under this Subsection (7)~~[(a)]~~ shall provide that:

394 (i) An institution may dispose of any record after retaining it for the period prescribed  
395 by the commissioner for retention of records of its class. If an institution disposes of a record  
396 after the prescribed period, the institution has no duty to produce it in any action or proceeding  
397 and is not liable to any person by reason of that disposition.

398 (ii) Any institution may keep records in its custody in the form of microfilm or  
399 equivalent reproduction. Any such reproduction shall have the same force and effect as the  
400 original and shall be admissible into evidence as if it were the original.

401 ~~(c)~~ (d) In adopting rules under this Subsection (7), the commissioner shall take into  
402 consideration:

403 (i) actions at law and administrative proceedings in which the production of the records  
404 might be necessary or desirable;

405 (ii) state and federal statutes of limitation applicable to the actions or proceedings;

406 (iii) the availability from other sources of information contained in these records; and

407 (iv) other matters the commissioner considers pertinent in formulating rules that  
408 require institutions to retain their records for as short a period as commensurate with the  
409 interest in having the records available of:

410 (A) customers, members, depositors, and shareholders of the institutions; and

411 (B) the people of this state.

412 (8) (a) The commissioner may establish reasonable classes of depository and other  
413 financial institutions including separate classes for:

414 (i) savings and loan associations and related institutions~~;~~;

415 (ii) banks and related institutions~~;~~;

416 (iii) credit unions~~;~~; and

417 (iv) industrial ~~loan corporations~~ banks.

418 (b) If the restrictions or requirements the commissioner imposes are not more stringent  
419 than those applicable under federal law or regulation to federally chartered institutions of the  
420 same class, the commissioner may establish the following for each class in a manner consistent  
421 with this title:

422 (i) eligible classes and types of investments for the deposits and other funds of those  
423 financial institutions;

424 (ii) minimum standards, in amounts sufficient to protect depositors and other creditors,  
425 for the amount and types of capital required to engage in the business conducted by each class  
426 or to obtain a license or to establish a branch or additional office of an institution of each class;

427 (iii) eligible obligations, reserves, and other accounts to be included in the computation  
428 of capital;

- 429 (iv) minimum liquidity requirements for financial institutions within each class in  
430 amounts sufficient to meet the demands of depositors and other creditors for liquid funds;
- 431 (v) limitations on the amount and type of borrowings by each class of financial  
432 institution in relation to the amount of its capital and the character and condition of its assets  
433 and its deposits and other liabilities;
- 434 (vi) limitations on the amount and nature of loans and extensions of credit to any  
435 person or related persons by each class of financial institution in relation to the amount of its  
436 capital; and
- 437 (vii) limitations on the amount and nature of loans and extensions of credit by a  
438 financial institution or other person within each class to an executive officer, director, or  
439 principal shareholder of:
- 440 (A) the institution or other person;
- 441 (B) any company of which the institution or other person is a subsidiary;
- 442 (C) any subsidiary of the institution or other person;
- 443 (D) any affiliate of the institution; and
- 444 (E) a company controlled by an executive officer, director, or principal shareholder of  
445 the institution.
- 446 (9) The commissioner may define unfair trade practices of financial institutions and  
447 other persons subject to the jurisdiction of the department and to prohibit or restrict these  
448 practices.
- 449 (10) The commissioner may establish reasonable standards to promote the fair and  
450 truthful advertising of:
- 451 (a) services offered by a financial institution;
- 452 (b) the charges for the services advertised under Subsection (10)(a);
- 453 (c) the interest or other compensation to be paid on deposits or any debt instrument  
454 offered for sale by the institution;
- 455 (d) the nature and extent of any:
- 456 (i) insurance on deposits[;];
- 457 (ii) savings accounts[;];
- 458 (iii) share accounts[;];
- 459 (iv) certificates of deposit[;];

460           (v) time deposit accounts[;];  
461           (vi) NOW accounts[;];  
462           (vii) share draft accounts[;];  
463           (viii) transaction accounts[;]; or  
464           (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by any  
465 financial institution or other person subject to the jurisdiction of the department; and  
466           (e) the safety or financial soundness of any financial institution or other person subject  
467 to the jurisdiction of the department.

468           (11) The commissioner may define what constitutes an impairment of capital for each  
469 class of financial institution or other person subject to the jurisdiction of the department.

470           (12) The commissioner may designate days on which depository institutions are closed  
471 in accordance with Section 7-1-808.

472           (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale  
473 of a security to the extent authorized by Section 7-1-503.

474           (14) The commissioner may require the officers of any institution or other person  
475 subject to the commissioner's jurisdiction to open and keep a standard set of books, computer  
476 records, or both for the purpose of keeping accurate and convenient records of the transactions  
477 and accounts of the institution in a manner to enable the commissioner, supervisors, and  
478 department examiners to readily ascertain the institution's true condition. These requirements  
479 shall be consistent with generally accepted accounting principles for financial institutions.

480           (15) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
481 the commissioner may adopt and issue rules consistent with the purposes and provisions of this  
482 title, and may revise, amend, or repeal the rules adopted.

483           Section 6. Section **7-1-324** is amended to read:

484           **7-1-324. Debt cancellation agreements and debt suspension agreements.**

485           (1) As used in this section:

486           (a) "Class of depository institution" means a class consisting of:

487           (i) banks;

488           (ii) credit unions;

489           (iii) industrial [~~loan corporations~~] banks;

490           (iv) savings and loan associations; or

491 (v) wholly owned subsidiaries of a depository institution listed in this Subsection

492 (1)(a).

493 (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.

494 (c) "Debt suspension agreement" is as defined in Section 31A-21-109.

495 (2) Subject to the other provisions of this section, the commissioner may by rule, made  
496 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

497 (a) authorize any member of a class of depository institution that is subject to the  
498 jurisdiction of the department to issue:

499 (i) a debt cancellation agreement; or

500 (ii) a debt suspension agreement; and

501 (b) regulate the issuance of a debt cancellation agreement or a debt suspension  
502 agreement issued in this state by a member of a class of depository institution.

503 (3) (a) Any rule adopted by the commissioner under this section as applied to a class of  
504 depository institution shall be substantially similar to any federal regulation applying to the  
505 same class of depository institution.

506 (b) Any rule adopted by the commissioner applicable to a class of depository institution  
507 described in this Subsection (3)(b) shall be substantially similar to any federal regulation  
508 applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt  
509 cancellation agreement or debt suspension agreement for that class of depository institution.

510 (4) (a) An out-of-state depository institution may issue a debt cancellation agreement  
511 or debt suspension agreement in this state if:

512 (i) the home state of the out-of-state depository institution authorizes and regulates the  
513 issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state  
514 depository institution; and

515 (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with  
516 regulations from the out-of-state depository institution's home state that regulate the issuance of  
517 a debt cancellation agreement or a debt suspension agreement.

518 (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described  
519 in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section  
520 that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in  
521 this state by the class of depository institution to which the out-of-state depository institution

522 belongs if the regulations of the out-of-state depository institution's home state do not provide  
523 at least the same level of protection with respect to a debt cancellation agreement or debt  
524 suspension agreement as the rules adopted by the commissioner under this section with respect  
525 to the same class of depository institution:

- 526 (i) for the safety and soundness of the depository institution; and
- 527 (ii) for consumer protections for the borrowers of the depository institution.

528 Section 7. Section **7-1-503** is amended to read:

529 **7-1-503. Regulation of sale by financial institution of its securities -- Solicitation**  
530 **of deposit accounts restricted -- Violations.**

531 (1) As used in this section, "security" has the same meaning as in Section 61-1-13,  
532 except that "security" does not include:

533 (a) a certificate of deposit or similar instrument issued by:

- 534 (i) a bank[;];
- 535 (ii) a savings and loan association[;];
- 536 (iii) a credit union[;]; or
- 537 (iv) an industrial [~~loan corporation~~] bank;

538 (b) a loan participation, letter of credit, or other form of indebtedness incurred in the  
539 ordinary course of business by:

- 540 (i) a bank[;];
- 541 (ii) a savings and loan association[;];
- 542 (iii) a credit union[;]; or
- 543 (iv) an industrial [~~loan corporation~~] bank; or

544 (c) (i) a promissory note or other evidence of indebtedness and the underlying security  
545 for it[;];

- 546 (ii) a lease of personal property[;];
- 547 (iii) a contract to sell real or personal property[;]; or
- 548 (iv) any other loan or investment sold by a depository institution in the secondary  
549 market.

550 (2) A person subject to the jurisdiction of the department may not, directly or  
551 indirectly, issue, offer, offer to sell, offer for sale, or sell any security of which it is the issuer  
552 without:

553 (a) the prior approval of the commissioner;  
554 (b) payment of the fee prescribed in Section 7-1-401; and  
555 (c) complying with the rules of the department with respect to securities.

556 (3) (a) A person not otherwise subject to the jurisdiction of the department may not  
557 issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in any  
558 account or to purchase or invest in any instrument creating or evidencing a debtor-creditor  
559 relationship, if the account or instrument is represented to be an account with or an instrument  
560 issued by a financial institution subject to the jurisdiction of the department, without:

561 (i) the prior approval of the commissioner;  
562 (ii) payment of the fee prescribed in Section 7-1-401; and  
563 (iii) complying with the rules of the department with respect to securities.

564 (b) Subsection (3)(a) does not apply to:

565 (i) insurance companies that have been issued certificates of authority under Title 31A,  
566 Insurance Code[;];  
567 (ii) brokers or dealers registered under:  
568 (A) Title 61, Chapter 1, Utah Uniform Securities Act[;]; or  
569 (B) the federal Securities Exchange Act of 1934[;]; or  
570 (iii) nondepository institutions to the extent that the securities are not offered for sale  
571 or sold through or by agents, representatives, officers, or employees of an affiliated Utah  
572 depository institution[;]; or  
573 (iv) out-of-state depository institution with at least one branch in Utah or otherwise  
574 offered for sale or sold on its premises.

575 (4) The rules of the department:

576 (a) shall, at a minimum, require registration with the department; and  
577 (b) may require the use of an offering circular containing such material information as  
578 to the nature of the security and the financial condition of the issuer as the commissioner may  
579 require to protect the public interest.

580 (5) The provisions of Sections 61-1-21, 61-1-21.1, and 61-1-22 apply to violations of  
581 this section.

582 Section 8. Section **7-1-701** is amended to read:  
583 **7-1-701. Representation and transacting business as financial institution**

584 **restricted -- Restricted names -- Penalty.**

585 (1) As used in this section, "transact business" includes:

586 (a) advertising;

587 (b) representing oneself in any manner as being engaged in transacting business;

588 (c) registering an assumed name under which to transact business; or

589 (d) using an assumed business name, sign, letterhead, business card, promotion, or

590 other indication that one is transacting business.

591 (2) Unless authorized by the department or an agency of the federal government to do

592 so, it is unlawful for any person to:

593 (a) transact business as a:

594 (i) bank;

595 (ii) savings and loan association;

596 (iii) savings bank;

597 (iv) industrial [~~loan corporation~~] bank;

598 (v) credit union;

599 (vi) trust company; or

600 (vii) other financial or depository institution; or

601 (b) engage in any other activity subject to the jurisdiction of the department.

602 (3) (a) Except as provided in Subsections (3)(b) through (d), only the following may

603 transact business in this state under a name that includes "bank," "banker," "banking,"

604 "banque," "banc," "banco," "bancorp," "bancorporation," any derivative of these words, or any

605 other word or combination of words reasonably identifying the business of a bank:

606 (i) a national bank;

607 (ii) a bank authorized to do business under Chapter 3, Banks;

608 (iii) a bank holding company; or

609 (iv) an industrial [~~loan corporation authorized to:~~] bank.

610 [~~(A) conduct business under Chapter 8, Industrial Loan Corporations; and]~~

611 [~~(B) accept or hold deposit accounts insured by a federal deposit insurance agency.]~~

612 (b) A person authorized to operate in this state as a credit card bank, as defined in

613 Section 7-3-3[-];

614 (i) may transact business under the name "credit card bank"; and

615           (ii) may not transact business under the name of "bank" unless it is immediately  
616 preceded by "credit card."

617           (c) A nonbank subsidiary of a bank holding company may transact business under a  
618 name restricted in Subsection (3)(a) if the name:

619               (i) is also part of the name of its parent holding company; or

620               (ii) is used for a group of subsidiaries of the parent holding company.

621           (d) The Utah Bankers Association or other bona fide trade association of authorized  
622 banks may transact its affairs in this state under a name restricted under Subsection (3)(a) if it  
623 does not operate and does not hold itself out to the public as operating a depository or financial  
624 institution.

625           (4) (a) Except as provided in Subsection (4)(b), only the following may transact  
626 business in this state under a name that includes "savings association," "savings and loan  
627 association," "building and loan association," "building association," any derivative of these  
628 words, or any other word or combination of words reasonably identifying the business of a  
629 savings and loan association:

630               (i) a federal savings and loan association;

631               (ii) a federal savings bank; or

632               (iii) a savings and loan association authorized to do business under Chapter 7, Savings  
633 and Loan Associations Act.

634           (b) A national bank may transact business under a name restricted in Subsection (4)(a)  
635 if the restricted words are part of the bank's corporate name.

636           (5) Only the following may transact business under the name "savings bank":

637               (a) a depository institution listed in Subsection (3)(a);

638               (b) a depository institution listed in Subsection (4)(a); or

639               (c) a depository institution authorized under state law to operate in this state as a  
640 savings bank.

641           (6) (a) Only an industrial loan [~~corporation~~] company authorized to do business under  
642 Chapter 8, Industrial [~~Loan Corporations,~~] Banks, to the extent permitted by Section 7-8-21,  
643 may transact business in this state under a name that includes "industrial loan [~~corporation~~]  
644 company," "ILC," [~~"thrift,"~~] or any other word, combination of words, or abbreviation  
645 reasonably identifying the business of an industrial loan [~~corporation~~] company.

646           **(b) Only an industrial bank authorized to do business under Chapter 8, Industrial**  
647 **Banks, may transact business in this state under a name that includes "industrial bank," "thrift,"**  
648 **or any other word, combination of words, or abbreviation reasonably identifying the business**  
649 **of an industrial bank.**

650           (7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do  
651 business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact  
652 business in this state under a name that includes "credit union" or any other word or  
653 combination of words reasonably identifying the business of a credit union.

654           (b) The restriction in Subsection (7)(a) does not apply to the Utah League of Credit  
655 Unions, any credit union chapter, or any other association affiliated with the Utah League of  
656 Credit Unions that restricts its services primarily to credit unions.

657           (8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers  
658 under Chapter 5, Trust Business, may transact business in this state under a name that includes  
659 "trust," "trustee," "trust company," or any other word or combination of words reasonably  
660 identifying the business of a trust company.

661           (b) A business entity organized as a business trust, as defined in Section 7-5-1, may use  
662 "business trust" in its name if it does not hold itself out as being a trust company.

663           (9) The restrictions of Subsections (3) through (8) do not apply to:

664           (a) the name under which an out-of-state depository institution operates a loan  
665 production office in this state, if the commissioner approves the name as not being reasonably  
666 likely to mislead the public;

667           (b) the name under which a service organization of a financial institution transacts  
668 business, if the commissioner approves the name as not being reasonably likely to mislead the  
669 public;

670           (c) the name under which a subsidiary of a depository or financial institution transacts  
671 business, if the commissioner approves the name as not being reasonably likely to mislead the  
672 public; or

673           (d) a trade association or other nonprofit organization composed of members of a  
674 particular class of financial institutions using words applicable to that class.

675           (10) (a) Upon written request, the commissioner may grant an exemption to this  
676 section if the commissioner finds that the use of an otherwise restricted name or word is not

677 reasonably likely to cause confusion or lead the public to believe that the person requesting the  
678 exemption is a depository or financial institution or is conducting a business subject to the  
679 jurisdiction of the department.

680 (b) In granting an exemption under Subsection (10)(a), the commissioner may restrict  
681 or condition the use of the name or word or the activities of the person or business as the  
682 commissioner considers necessary to protect the public.

683 (11) (a) Each person[~~, corporation, association, or other business entity~~] and each  
684 principal and officer of a business entity violating this section is guilty of a class A  
685 misdemeanor. Each day of violation constitutes a separate offense.

686 (b) In addition to a criminal penalty imposed under Subsection (11)(a), the  
687 commissioner may issue a cease and desist order against a person violating this section. The  
688 commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply  
689 with the cease and desist order.

690 Section 9. Section ~~7-1-810~~ is enacted to read:

691 **7-1-810. Limited liability companies.**

692 (1) Notwithstanding any other provision of this title, if the conditions of this section are  
693 met, the following may be organized as or convert to a limited liability company under Title  
694 48, Chapter 2c, Utah Revised Limited Liability Company Act:

695 (a) an industrial bank chartered under Chapter 8, Industrial Banks;

696 (b) an industrial loan company as defined in Section 7-8-21; or

697 (c) any of the following if the institution is an S-Corporation, as defined in Section  
698 1361, Internal Revenue Code, immediately before becoming a limited liability company:

699 (i) a bank chartered under Chapter 3, Banks;

700 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan  
701 Associations Act; or

702 (iii) a depository institution holding company.

703 (2) (a) Before an institution described in Subsection (1) may organize as or convert to a  
704 limited liability company, the institution shall obtain approval of the commissioner.

705 (b) (i) To obtain the approval under this section from the commissioner, the institution  
706 shall file a request for approval with the commissioner at least 30 days before the day on which  
707 the institution becomes a limited liability company.

708 (ii) If the commissioner does not disapprove the request for approval within 30 days  
709 from the day on which the commissioner receives the request, the request is considered  
710 approved.

711 (iii) When taking action on a request for approval filed under this section, the  
712 commissioner may:

713 (A) approve the request;

714 (B) approve the request subject to terms and conditions the commissioner considers  
715 necessary; or

716 (C) disapprove the request.

717 (3) To approve a request for approval, the commissioner shall find:

718 (a) for an institution described in Subsection (1) that is required to be insured by a  
719 federal deposit insurance agency, that the institution:

720 (i) will operate in a safe and sound manner;

721 (ii) has the following characteristics:

722 (A) the institution is not subject to automatic termination, dissolution, or suspension  
723 upon the happening of some event other than the passage of time;

724 (B) the exclusive authority to manage the institution is vested in a board of managers  
725 or directors that:

726 (I) is elected or appointed by the owners;

727 (II) is not required to have owners of the institution included on the board;

728 (III) possesses adequate independence and authority to supervise the operation of the  
729 institution; and

730 (IV) operates with substantially the same rights, powers, privileges, duties, and  
731 responsibilities, as the board of directors of a corporation;

732 (C) neither state law, nor the institution's operating agreement, bylaws, or other  
733 organizational documents provide that an owner of the institution is liable for the debts,  
734 liabilities, and obligations of the institution in excess of the amount of the owner's investment;  
735 and

736 (D) (I) neither state law, nor the institution's operating agreement, bylaws, or other  
737 organizational documents require the consent of any other owner of the institution in order for  
738 any owner to transfer an ownership interest in the institution, including voting rights; and

739 (II) the institution is able to obtain new investment funding if needed to maintain  
740 adequate capital; and

741 (iii) is able to comply with all legal and regulatory requirements for an insured  
742 depository institution under applicable federal and state law; and

743 (b) for an institution described in Subsection (1) that is not required to be insured by a  
744 federal deposit insurance agency, that the institution will operate in a safe and sound manner.

745 (4) (a) An institution listed in Subsection (3)(a) that is organized as a limited liability  
746 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it  
747 is authorized to conduct business under this title as a limited liability company.

748 (b) Notwithstanding Subsection (3)(a)(ii)(A), an institution listed in Subsection (3)(a)  
749 that is a limited liability company may be voluntarily dissolved by its members:

750 (i) in accordance with Title 48, Chapter 2c, Part 12, Dissolution; and  
751 (ii) with the prior written approval of the commissioner.

752 (5) All rights, privileges, powers, duties, and obligations of an institution described in  
753 Subsection (1) that is organized as a limited liability company and its members and managers  
754 shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,  
755 except as otherwise provided in this title.

756 (6) Unless the context requires otherwise, for the purpose of applying this title to an  
757 institution described in Subsection (1) that is organized as a limited liability company:

758 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,  
759 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability  
760 Company Act;

761 (b) "articles of incorporation" includes a limited liability company's articles of  
762 organization as that term is used in Section 48-2c-403;

763 (c) "board of directors" includes any of the following of a limited liability company:

764 (i) all managers;  
765 (ii) all directors; or  
766 (iii) one or more persons who have, with respect to an institution described in  
767 Subsection (1), authority substantially similar to that of a board of directors of a corporation;

768 (d) "bylaws" includes a limited liability company's operating agreement as that term is  
769 defined in Section 48-2c-102;

770 (e) "corporation" includes a limited liability company organized under Title 48,  
771 Chapter 2c, Utah Revised Limited Liability Company Act;

772 (f) "director" includes any of the following of a limited liability company:

773 (i) a manger;

774 (ii) a director; or

775 (iii) other person who has with respect to the institution described in Subsection (1),  
776 authority substantially similar to that of a director of a corporation;

777 (g) "dividend" includes distributions made by a limited liability company under Title  
778 48, Chapter 2c, Part 10, Distributions;

779 (h) "incorporator" includes the organizers of a limited liability company as provided in  
780 Title 48, Chapter 2c, Part 4, Formation;

781 (i) "officer" includes any of the following of an institution described in Subsection (1):

782 (i) an officer; or

783 (ii) other person who has with respect to the institution described in Subsection (1)  
784 authority substantially similar to that of an officer of a corporation;

785 (j) "security," "shares," or "stock" of a corporation includes:

786 (i) a membership interest in a limited liability company as provided in Title 48,  
787 Chapter 2c, Part 7, Members; and

788 (ii) any certificate or other evidence of an ownership interest in a limited liability  
789 company; and

790 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution  
791 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,  
792 Members.

793 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
794 commissioner shall make rules governing the form of a request for approval filed under this  
795 section.

796 Section 10. Section 7-3-3 is amended to read:

797 **7-3-3. "Banking business" defined -- Credit card banks -- Insurance of deposit**  
798 **accounts.**

799 (1) (a) Except as provided under Subsection (1)(b), a person is considered to be  
800 conducting a banking business and is a bank subject to the provisions of this title that are

801 applicable to banks if the person is authorized under the laws of this state, another state, the  
 802 United States, the District of Columbia, or any territory of the United States to accept deposits  
 803 from the public and to conduct such other business activities as may be authorized by statute or  
 804 by the commissioner in accordance with Subsection 7-3-10(2).

805 (b) A person is not considered to be a bank subject to the provisions of this title that are  
 806 applicable to banks if the person is authorized to conduct the business of:

807 (i) a federal savings and loan association [~~or~~];

808 (ii) a federal savings bank[;];

809 (iii) a savings and loan association [~~or~~] subject to Chapter 7, Savings and Loan  
 810 Associations Act;

811 (iv) a savings bank subject to Chapter 7, Savings and Loan Associations Act;

812 (v) an industrial [~~loan corporation~~] bank subject to Chapter 8, Industrial Banks;

813 (vi) a federally chartered credit union[;]; or

814 (vii) a credit union subject to Chapter 9, Utah Credit Union Act.

815 (2) A person authorized to operate as a bank in this state may operate as a credit card  
 816 bank if it:

817 (a) engages only in credit card operations;

818 (b) does not accept demand deposits or deposits that the depositor may withdraw by  
 819 check or similar means for payment to third parties or others;

820 (c) does not accept any savings or time deposits of less than \$100,000;

821 (d) maintains only one office that accepts deposits; and

822 (e) does not engage in the business of making commercial loans.

823 (3) All deposit accounts in banks or branches subject to the jurisdiction of the  
 824 department shall be insured by the Federal Deposit Insurance Corporation or any successor to  
 825 [~~it~~] the Federal Deposit Insurance Corporation.

826 Section 11. Section **7-8-3** is amended to read:

827 **7-8-3. Organization -- Authorization to conduct business -- Deposit insurance.**

828 (1) (a) Subject to Subsection (4), the commissioner may authorize a person described  
 829 in Subsection (2) to conduct business as an industrial bank.

830 [~~(1)~~] (2) (a) Each [~~domestic corporation~~] person organized to conduct the business of  
 831 an industrial [~~loan corporation~~] bank in this state shall be organized under:

832 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act[-]; or  
833 (ii) in accordance with Section 7-1-810, Title 48, Chapter 2c, Utah Revised Limited  
834 Liability Company Act.

835 (b) A person may not conduct business as an industrial bank authorized under this  
836 chapter to conduct business as an industrial bank in any form of entity other than those  
837 provided in Subsection (2)(a).

838 (3) (a) All rights, privileges, powers, duties, and obligations of [the] a corporation  
839 authorized to conduct business as an industrial bank and its officers, directors, and stockholders  
840 shall be governed by Title 16, Chapter 10a, Utah Revised Business Corporation Act, except as  
841 otherwise provided in this title.

842 (b) All rights, privileges, powers, duties, and obligations of a limited liability company  
843 authorized to conduct business as an industrial bank and its members and managers shall be  
844 governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, except as  
845 otherwise provided in this title.

846 ~~[(2) The commissioner may authorize a domestic corporation to conduct business as an~~  
847 ~~industrial loan corporation.]~~

848 (4) (a) An industrial bank is authorized to receive and hold deposits.

849 (b) An industrial bank may not conduct business under this chapter as an industrial  
850 bank unless the industrial bank obtains insurance from the Federal Deposit Insurance  
851 Corporation or a successor federal deposit insurance entity for any deposits received or held by  
852 the industrial bank.

853 Section 12. Section **7-8-5** is amended to read:

854 **7-8-5. Acquisition of own stock restricted -- Capital requirements.**

855 (1) (a) An industrial [~~loan corporation~~] bank may not accept as collateral, or be a  
856 purchaser of, shares of its own capital stock, unless taking the shares as collateral or purchasing  
857 them is necessary to prevent loss upon a debt previously contracted in good faith.

858 (b) All shares of stock acquired under this Subsection (1) by the industrial [~~loan~~  
859 corporation] bank through any purchase, foreclosure, judgment, or otherwise shall be sold  
860 within 12 months from the date of acquisition.

861 (c) The par value of all the shares held after acceptance or purchase may not exceed  
862 10% of the capital and surplus of the industrial [~~loan corporation~~] bank.

863 (2) (a) Each industrial [~~loan corporation~~] bank accepting or holding deposits shall  
864 maintain the minimum amount of capital required by its federal deposit insurer.

865 (b) The commissioner may require a greater amount of capital if [~~he~~] the commissioner  
866 determines that it is necessary to protect the interests of:

867 (i) the depositors and other customers of the industrial [~~loan corporation~~] bank; and  
868 (ii) the public.

869 [~~(3) An industrial loan corporation may accept or hold deposits only if its accounts are~~  
870 ~~insured by a federal deposit insurance agency.~~]

871 Section 13. Section **7-8-7** is amended to read:

872 **7-8-7. Reports to commissioner.**

873 Each industrial [~~loan corporation~~] bank shall file reports of its condition in accordance  
874 with Section 7-1-318.

875 Section 14. Section **7-8-11** is amended to read:

876 **7-8-11. Dividends.**

877 (1) The board of directors of an industrial [~~loan corporation authorized to accept~~  
878 ~~deposits~~] bank may declare a dividend out of the net profits of the [~~corporation~~] industrial bank  
879 after providing for all expenses, losses, interest, and taxes accrued or due from the  
880 [~~corporation~~] industrial bank in accordance with this section and subject to Section 7-8-12.

881 (2) The [~~corporation~~] industrial bank shall transfer to a surplus fund at least 10% of its  
882 net profits before dividends for the period covered by the dividend, until the surplus reaches  
883 100% of its capital stock.

884 (3) Any amount paid from the [~~corporation's~~] industrial bank's net earnings into a fund  
885 for the retirement of any debenture capital or preferred stock for the period covered by the  
886 dividend is considered an addition to its surplus fund if, upon the retirement of the debenture  
887 capital or preferred stock, the amount paid into the retirement fund for the period may be  
888 properly carried to the surplus fund of the [~~corporation~~] industrial bank. In this case the  
889 industrial [~~loan corporation~~] bank shall transfer to the surplus fund the amount paid into the  
890 retirement fund.

891 Section 15. Section **7-8-12** is amended to read:

892 **7-8-12. Charge off of losses sustained on receivables and operating losses --**  
893 **Replenishment of surplus account.**

894 (1) (a) Losses sustained on receivables by an industrial [~~loan corporation authorized to~~  
895 ~~accept deposits~~] bank shall be charged first to the [~~corporation's~~] industrial bank's reserve for  
896 losses and then to its current income.

897 (b) Operating losses shall be charged first to the [~~corporation's~~] industrial bank's  
898 current income, next to undivided profits and then, after undivided profits have been  
899 exhausted, to the surplus account.

900 (2) A charge to the [~~corporation's~~] industrial bank's surplus account shall be  
901 replenished from net profits or capital contributions. The [~~corporation~~] industrial bank may  
902 declare or pay a dividend only with the written permission of the commissioner until its surplus  
903 account reaches an amount prescribed by the commissioner in writing.

904 Section 16. Section **7-8-13** is amended to read:

905 **7-8-13. Real estate acquisition, holding, and conveyance.**

906 An industrial [~~loan corporation~~] bank may purchase, hold, and convey real estate, other  
907 than premises used in the conduct of its business, only for the purposes and in a manner  
908 prescribed by rule.

909 Section 17. Section **7-8-14** is amended to read:

910 **7-8-14. Investment in property used in conduct of business.**

911 (1) An industrial [~~loan corporation~~] bank may invest in premises, equipment, and other  
912 property used in conducting its own business, as the board of directors may approve by  
913 resolution. This property may include:

914 (a) real property and any interest in real property, furniture, fixtures, and equipment for  
915 use in carrying on its own business; and

916 (b) the stock, bonds, debentures, or other obligations of any subsidiary or affiliate  
917 whose exclusive activity is the ownership and management of property used in conducting the  
918 industrial [~~loan corporation~~] bank's business.

919 (2) The amount of these investments may not exceed 50% of the industrial [~~loan~~  
920 ~~corporation's~~] bank's total capital, unless the commissioner approves a higher amount in  
921 writing.

922 Section 18. Section **7-8-15** is amended to read:

923 **7-8-15. Bad debts.**

924 (1) All demand and matured debts due to any industrial [~~loan corporation~~] bank on

925 which interest is past due and has not been paid for a period of six months, unless they are well  
926 secured and in the process of collection, are considered bad debts and shall be charged off to  
927 the profit and loss account.

928 (2) The ~~[corporation]~~ industrial bank shall maintain in its files documentation to  
929 support its evaluation of the security and monthly reports of its collection efforts and a plan of  
930 collection.

931 Section 19. Section **7-8-16** is amended to read:

932 **7-8-16. Registration of industrial bank holding company -- Filing and contents of**  
933 **statement -- Exemptions -- Rules.**

934 (1) Each industrial ~~[loan corporation]~~ bank holding company shall register with the  
935 department by filing a registration statement in a form prescribed by the commissioner. The  
936 statement shall include:

937 (a) the name, address, and principal occupation of each officer and director of the  
938 registrant;

939 (b) a statement of financial condition as of a date not more than six months prior to the  
940 date of registration;

941 (c) a certificate of good standing in the state in which the registrant is incorporated; and

942 (d) evidence that the company is authorized to transact business in this state.

943 (2) (a) A person may not form an industrial ~~[loan corporation]~~ bank holding company,  
944 unless it:

945 (i) is authorized to do so by the commissioner; and

946 (ii) is registered with the department as provided in Subsection (1).

947 (b) An applicant for authorization to form a holding company shall file an application  
948 in a form prescribed by the commissioner by rule.

949 (3) The commissioner may exempt an industrial ~~[loan corporation]~~ bank holding  
950 company in whole or in part from registration if it is:

951 (a) a bank holding company or savings and loan holding company subject to federal  
952 regulation;

953 (b) a person that is a holding company only because ~~[it]~~ the person owns or controls  
954 voting shares of an industrial ~~[loan corporation]~~ bank or holding company acquired in  
955 connection with the underwriting of securities if ~~[it]~~ the person holds these shares no longer

956 than 120 days, unless the commissioner approves a longer period to permit their sale on a  
957 reasonable basis;

958 (c) a person exempt from the jurisdiction of the department under Section 7-1-502; or

959 (d) a person exempted in writing by the commissioner or by rule.

960 (4) The commissioner may adopt rules with respect to industrial [~~loan corporation~~]  
961 banks holding companies as are necessary to protect:

962 (a) depositors[;];

963 (b) other creditors[;];

964 (c) the public[;]; and

965 (d) the financial system of the state.

966 Section 20. Section **7-8-19** is amended to read:

967 **7-8-19. Meetings of the board of directors.**

968 (1) A quorum of the board of directors of each industrial [~~loan corporation~~] bank shall  
969 meet at least once each quarter.

970 (2) Minutes of each meeting of the board of directors shall be:

971 (a) kept by the secretary of the [~~corporation~~] industrial bank; and

972 (b) maintained at the head office of the [~~corporation~~] industrial bank.

973 Section 21. Section **7-8-20** is amended to read:

974 **7-8-20. Limitations on loans to one borrower -- Exceptions -- Rules.**

975 (1) Except as provided in this section, the total loans and extensions of credit by any  
976 industrial [~~loan corporation~~] bank to any person outstanding at any one time may not exceed  
977 15% of the industrial [~~loan corporation's~~] bank's total capital.

978 (2) Subsection (1) does not apply to an extension of credit that is subject to, or  
979 expressly exempted from, a federal statute or federal regulation limiting the amount of total  
980 loans and credit that may be extended to any person or group of persons.

981 (3) The commissioner may by rule:

982 (a) exempt from Subsection (1) any class of loans or class of extensions of credit that  
983 are adequately secured or are not otherwise a risk to the safe and sound operation of an  
984 industrial [~~loan corporation~~] bank;

985 (b) define terms and phrases necessary to interpret and implement this section;

986 (c) adopt standards for aggregating or segregating loans to the same or different

987 persons;

988 (d) describe records required to be maintained;

989 (e) require specific actions to be taken by an institution's board of directors or  
990 executive officers; and

991 (f) prescribe other actions necessary to interpret and implement this section.

992 Section 22. Section **7-8-21** is enacted to read:

993 **7-8-21. Application of chapter to industrial loan companies.**

994 (1) As used in this section, "industrial loan company" is a person that on the effective  
995 date of this bill is:

996 (a) authorized to conduct business under this chapter; and

997 (b) not authorized to hold or receive deposits.

998 (2) An industrial loan company may operate as an industrial bank under this chapter  
999 except that the industrial loan company:

1000 (a) may not hold or receive deposits without:

1001 (i) the prior written approval of the commissioner; and

1002 (ii) obtaining insurance from the Federal Deposit Insurance Corporation or a successor  
1003 federal deposit insurance entity;

1004 (b) may not engage in any conduct authorized by this title that is conditioned on the  
1005 industrial loan company being a depository institution without meeting the conditions  
1006 described in Subsections (2)(a)(i) and (ii); and

1007 (c) may not use a term listed in Subsection 7-1-701(3) in its name without meeting the  
1008 conditions described in Subsections (2)(a)(i) and (ii).

1009 (3) If a person is not authorized to conduct business under this chapter on the effective  
1010 date of this bill, that person may not be considered an industrial loan company under this  
1011 section.

1012 Section 23. Section **9-2-1923** is amended to read:

1013 **9-2-1923. Permissible investments.**

1014 Investments by designated investors in the Utah fund of funds are permissible  
1015 investments under applicable laws of the state for:

1016 (1) state-chartered banks;

1017 (2) state-chartered savings and loan associations;

- 1018 (3) state-chartered credit unions;  
 1019 (4) state-chartered industrial [~~loan corporations~~] banks; and  
 1020 (5) domestic insurance companies.

1021 Section 24. Section **25-5-4** is amended to read:

1022 **25-5-4. Certain agreements void unless written and signed.**

1023 (1) The following agreements are void unless the agreement, or some note or  
 1024 memorandum of the agreement, is in writing, signed by the party to be charged with the  
 1025 agreement:

1026 [~~(1)~~] (a) every agreement that by its terms is not to be performed within one year from  
 1027 the making of the agreement;

1028 [~~(2)~~] (b) every promise to answer for the debt, default, or miscarriage of another;

1029 [~~(3)~~] (c) every agreement, promise, or undertaking made upon consideration of  
 1030 marriage, except mutual promises to marry;

1031 [~~(4)~~] (d) every special promise made by an executor or administrator to answer in  
 1032 damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;

1033 [~~(5)~~] (e) every agreement authorizing or employing an agent or broker to purchase or  
 1034 sell real estate for compensation; and

1035 [~~(6)~~] (f) every credit agreement.

1036 (2) (a) As used in [~~Subsection (6)~~] Subsections (1)(f) and this Subsection (2):

1037 (i) (A) "Credit agreement" means an agreement by a financial institution to:

1038 (I) lend, delay, or otherwise modify an obligation to repay money, goods, or things in  
 1039 action[~~;~~];

1040 (II) otherwise extend credit[~~;~~]; or [~~to~~]

1041 (III) make any other financial accommodation.

1042 (B) "Credit agreement" does not include the usual and customary agreements related to  
 1043 deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.

1044 (ii) "Creditor" means a financial institution which extends credit or extends a financial  
 1045 accommodation under a credit agreement with a debtor.

1046 (iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a  
 1047 financial accommodation, under a credit agreement with a financial institution.

1048 (iv) "Financial institution" means:

1049           (A) a state or federally chartered;

1050           (I) bank[;];

1051           (II) savings and loan association[;];

1052           (III) savings bank[;];

1053           (IV) industrial [~~loan corporation;~~] bank; or

1054           (V) credit union[;]; or

1055           (B) any other institution under the jurisdiction of the commissioner of Financial  
1056 Institutions as provided in Title 7, Financial Institutions Act.

1057           (b) (i) Except as provided in Subsection [~~(6)~~] (2)(e), a debtor or a creditor may not  
1058 maintain an action on a credit agreement unless the agreement:

1059               (A) is in writing[;];

1060               (B) expresses consideration[;];

1061               (C) sets forth the relevant terms and conditions[;]; and

1062               (D) is signed by the party against whom enforcement of the agreement would be  
1063 sought.

1064           (ii) For purposes of this act, a signed application constitutes a signed agreement, if the  
1065 creditor does not customarily obtain an additional signed agreement from the debtor when  
1066 granting the application.

1067           (c) The following actions do not give rise to a claim that a credit agreement is created,  
1068 unless the agreement satisfies the requirements of Subsection [~~(6)~~] (2)(b):

1069               (i) the rendering of financial advice by a creditor to a debtor;

1070               (ii) the consultation by a creditor with a debtor; or

1071               (iii) the creation for any purpose between a creditor and a debtor of fiduciary or other  
1072 business relationships.

1073           (d) Each credit agreement shall contain a clearly stated typewritten or printed provision  
1074 giving notice to the debtor that the written agreement is a final expression of the agreement  
1075 between the creditor and debtor and the written agreement may not be contradicted by evidence  
1076 of any alleged oral agreement. The provision does not have to be on the promissory note or  
1077 other evidence of indebtedness that is tied to the credit agreement.

1078           (e) A credit agreement is binding and enforceable without any signature by the party to  
1079 be charged if:

1080 (i) the debtor is provided with a written copy of the terms of the agreement;  
1081 (ii) the agreement provides that any use of the credit offered shall constitute acceptance  
1082 of those terms; and

1083 (iii) after the debtor receives the agreement, the debtor, or a person authorized by the  
1084 debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

1085 Section 25. Section **31A-21-109** is amended to read:

1086 **31A-21-109. Debt cancellation agreements and debt suspension agreements.**

1087 (1) As used in this section:

1088 (a) "Debt cancellation agreement" means a contract between a lender and a borrower  
1089 where the lender, for a separately stated consideration, agrees to waive all or part of the debt in  
1090 the event of a fortuitous event such as death, disability, or the destruction of the lender's  
1091 collateral.

1092 (b) "Debt suspension agreement" means a contract between a lender and a borrower  
1093 where the lender, for a separately stated consideration, agrees to suspend scheduled installment  
1094 payments for an agreed period of time in the event of a:

1095 (i) fortuitous event such as involuntary unemployment or accident; or

1096 (ii) fortuitous condition such as sickness.

1097 (c) "Institution" means:

1098 (i) a bank as defined in Section 7-1-103;

1099 (ii) a credit union as defined in Section 7-1-103;

1100 (iii) an industrial [~~loan corporation~~] bank as defined in Section 7-1-103; or

1101 (iv) a savings and loan association as defined in Section 7-1-103.

1102 (d) "Regulate the issuance" includes regulation of the following with respect to a debt  
1103 cancellation agreement or a debt suspension agreement:

1104 (i) terms;

1105 (ii) conditions;

1106 (iii) rates;

1107 (iv) forms; and

1108 (v) claims.

1109 (e) "Subsidiary" is as defined in Section 7-1-103.

1110 (2) Except as provided in Subsection (6), the commissioner has sole jurisdiction over

1111 the regulation of a debt cancellation agreement or debt suspension agreement.

1112 (3) Subject to this section, the commissioner may by rule, made in accordance with  
1113 Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

1114 (a) authorize an insurer to issue:

1115 (i) a debt cancellation agreement; or

1116 (ii) a debt suspension agreement; and

1117 (b) regulate the issuance of:

1118 (i) a debt cancellation agreement; or

1119 (ii) a debt suspension agreement.

1120 (4) Except as provided in Subsection (6), a debt cancellation agreement or a debt  
1121 suspension agreement may be issued only by an insurer authorized to issue a debt cancellation  
1122 agreement or debt suspension agreement under this section.

1123 (5) (a) The rules promulgated by the commissioner under this section shall regulate the  
1124 issuance of a debt cancellation agreement or debt suspension agreement according to the  
1125 functional insurance equivalent of each type of debt cancellation agreement or debt suspension  
1126 agreement.

1127 (b) Except as provided in Subsection (5)(c), in accordance with Title 63, Chapter 46a,  
1128 Utah Administrative Rulemaking Act, the commissioner may by rule determine the functional  
1129 insurance equivalent of each type of debt cancellation agreement or debt suspension agreement.

1130 (c) Notwithstanding Subsection (5)(b), the functional insurance equivalent of a debt  
1131 cancellation agreement that provides for the cancellation of indebtedness at death is credit life  
1132 insurance.

1133 (6) Notwithstanding the other provisions of this section, the issuance of a debt  
1134 cancellation agreement or a debt suspension agreement by an institution or a subsidiary of an  
1135 institution is:

1136 (a) not subject to this section; and

1137 (b) subject to the jurisdiction of the primary regulator of:

1138 (i) the institution; or

1139 (ii) the subsidiary of an institution.

1140 Section 26. Section **67-4a-102** is amended to read:

1141 **67-4a-102. Definitions.**

1142 As used in this chapter:

1143 (1) "Administrator" means the deputy state treasurer assigned by the state treasurer to  
1144 administer the law governing unclaimed property in Utah.

1145 (2) "Apparent owner" means the person whose name appears on the records of the  
1146 holder as the person entitled to property held, issued, or owing by the holder.

1147 (3) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or  
1148 financial organization is directly liable.

1149 (b) "Bank draft" includes:

1150 (i) cashier's checks; and

1151 (ii) certified checks.

1152 (c) "Bank draft" does not include:

1153 (i) traveler's checks; or

1154 (ii) money orders.

1155 (4) "Banking organization" means:

1156 (a) a bank[;];

1157 (b) an industrial [~~loan corporation;~~] bank;

1158 (c) a trust company[;];

1159 (d) a savings bank[;]; or

1160 (e) any organization defined by other law as a bank or banking organization.

1161 (5) "Business association" means a nonpublic corporation, joint stock company,  
1162 investment company, business trust, partnership, or association for business purposes of two or  
1163 more individuals, whether or not for profit, including:

1164 (a) a banking organization[;];

1165 (b) a financial organization[;];

1166 (c) an insurance company[;]; or

1167 (d) a utility.

1168 (6) "Cashier's check" means a check drawn by a banking organization on itself, signed  
1169 by an officer of the banking organization, authorizing payment of the amount shown on its face  
1170 to the payee.

1171 (7) "Class action" means a legal action:

1172 (a) certified by the court as a class action; or

1173 (b) treated by the court as a class action without being formally certified as a class  
1174 action.

1175 (8) (a) "Deposit in a financial institution" means a demand, savings, or matured time  
1176 deposit with a banking or financial organization.

1177 (b) "Deposit in a financial institution" includes:

1178 (i) any interest or dividends on a deposit; and

1179 (ii) a deposit that is automatically renewable.

1180 (9) "Domicile" means the state of incorporation of a corporation and the state of the  
1181 principal place of business of an unincorporated person.

1182 (10) "Financial organization" means:

1183 (a) a savings and loan association; or

1184 (b) a credit union.

1185 (11) "Government entity" means:

1186 (a) the state[;];

1187 (b) any administrative unit of the state[;];

1188 (c) any political subdivision of the state[;];

1189 (d) any administrative unit of a political subdivision of the state[;]; or

1190 (e) any officer or employee of ~~[those entities]~~ an entity described in Subsections (11)(a)  
1191 through (d).

1192 (12) "Holder" means a person, wherever organized or domiciled, who is:

1193 (a) in possession of property belonging to another;

1194 (b) a trustee;

1195 (c) indebted to another on an obligation; or

1196 (d) charged with the duty of paying or delivering intangible property under Section  
1197 67-4a-302.

1198 (13) "Insurance company" means an association, corporation, fraternal or mutual  
1199 benefit organization, whether or not for profit, that is engaged in providing insurance coverage,  
1200 including:

1201 (a) accident[;] insurance;

1202 (b) burial[;] insurance;

1203 (c) casualty[;] insurance;

- 1204 (d) credit life[;] insurance;
- 1205 (e) contract performance[;] insurance;
- 1206 (f) dental[;] insurance;
- 1207 (g) fidelity[;] insurance;
- 1208 (h) fire[;] insurance;
- 1209 (i) health[;] insurance;
- 1210 (j) hospitalization[;] insurance;
- 1211 (k) illness[;] insurance;
- 1212 (l) life insurance, including endowments and annuities[;];
- 1213 (m) malpractice[;] insurance;
- 1214 (n) marine[;] insurance;
- 1215 (o) mortgage[;] insurance;
- 1216 (p) surety[;] insurance; and
- 1217 (q) wage protection insurance.
- 1218 (14) (a) "Intangible property" includes:
- 1219 (i) monies, checks, drafts, deposits in a financial institution, interest, dividends, and
- 1220 income;
- 1221 (ii) credit balances, customer overpayments, gift certificates over \$25, security
- 1222 deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified
- 1223 remittances;
- 1224 (iii) stocks, mutual funds, and other intangible ownership interests in business
- 1225 associations;
- 1226 (iv) monies deposited to redeem stocks, bonds, coupons, and other securities or to
- 1227 make distributions;
- 1228 (v) bonds, notes, and any other debt obligations;
- 1229 (vi) amounts due and payable under the terms of insurance policies;
- 1230 (vii) amounts distributable from a trust or custodial fund established under a plan to
- 1231 provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit
- 1232 sharing, employee savings, supplemental unemployment insurance or similar benefits; and
- 1233 (viii) amounts distributable from a mineral interest in land.
- 1234 (b) "Intangible property" does not include patronage capital of electric, telephone, and

1235 agricultural cooperatives.

1236 (15) "Last-known address" means a description of the location of the apparent owner  
1237 sufficient for the purpose of the delivery of mail.

1238 (16) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance  
1239 that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil,  
1240 gas, uranium, sulphur, lignite, coal, or other substance is found.

1241 (17) "Mineral proceeds" includes:

1242 (a) all obligations to pay resulting from the production and sale of minerals, including:

1243 (i) net revenue interest[;];

1244 (ii) royalties[;];

1245 (iii) overriding royalties[;];

1246 (iv) production payments[;]; and

1247 (v) joint operating agreements; and

1248 (b) all obligations for the acquisition and retention of a mineral lease, including:

1249 (i) bonuses[;];

1250 (ii) delay rentals[;];

1251 (iii) shut-in royalties[;]; and

1252 (iv) minimum royalties.

1253 (18) (a) "Money order" means a negotiable draft issued by a business association for  
1254 which the business association is not directly liable.

1255 (b) "Money order" does not mean a cashier's check.

1256 (19) "Net intangible property" means intangible property that is held, issued, or owing  
1257 in the ordinary course of a holder's business plus any income or increment derived from it and  
1258 less any lawful charges.

1259 (20) "Owner" means:

1260 (a) a depositor in the case of a deposit;

1261 (b) a beneficiary in the case of a trust other than a deposit in trust;

1262 (c) a creditor, claimant, or payee in the case of other intangible property; or

1263 (d) a person or that person's legal representative having a legal or equitable interest in  
1264 property subject to this chapter.

1265 (21) (a) "Ownership purchase funds" means any funds paid toward the purchase of a

1266 share, a mutual investment certificate, or any other interest in a banking or financial  
1267 organization.

1268 (b) "Ownership purchase funds" includes any interest or dividends paid on those funds.

1269 (22) "Person" means:

1270 (a) an individual[;];

1271 (b) a business association[;];

1272 (c) a government entity[;];

1273 (d) a public corporation[;];

1274 (e) a public authority[;];

1275 (f) an estate[;];

1276 (g) a trust[;];

1277 (h) two or more persons having a joint or common interest[;]; or

1278 (i) any other legal or commercial entity.

1279 (23) "State" means any state, district, commonwealth, territory, insular possession, or  
1280 any other area subject to the legislative authority of the United States.

1281 (24) "Utility" means a person who owns or operates for public use any plant,  
1282 equipment, property, franchise, or license for:

1283 (a) the transmission of communications, including cable television; or

1284 (b) the production, storage, transmission, sale, delivery, or furnishing of electricity,  
1285 water, steam, or gas.

1286 Section 27. Section **75-6-101** is amended to read:

1287 **75-6-101. Definitions.**

1288 As used in this part:

1289 (1) "Account" means a contract of deposit of funds between a depositor and a financial  
1290 institution and includes:

1291 (a) a checking account[;];

1292 (b) a savings account[;];

1293 (c) a certificate of deposit[;];

1294 (d) a share account[;]; and

1295 (e) other like arrangement.

1296 (2) "Beneficiary" means a person named in a trust account as one for whom a party to

1297 the account is named as trustee.

1298 (3) "Financial institution" means any organization authorized to do business under state  
1299 or federal laws relating to financial institutions, including, without limitation[;]:

1300 (a) banks [~~and~~];

1301 (b) trust companies[;];

1302 (c) industrial [~~loan corporations with thrift certificate authorization;~~] banks;

1303 (d) savings banks[;];

1304 (e) building and loan associations[;];

1305 (f) savings and loan companies or associations[;]; and

1306 (g) credit unions.

1307 (4) "Joint account" means an account payable on request to one or more of two or more  
1308 parties whether or not mention is made of any right of survivorship.

1309 (5) (a) "Multiple-party account" means any of the following types of account:

1310 [~~(a)~~] (i) a joint account;

1311 [~~(b)~~] (ii) a P.O.D. account; or

1312 [~~(c)~~] (iii) a trust account. [~~It~~]

1313 (b) "Multiple-party account" does not include:

1314 (i) accounts established for deposit of funds of a partnership, joint venture, or other  
1315 association for business purposes[;]; or

1316 (ii) accounts controlled by one or more persons as the duly authorized agent or trustee  
1317 for a corporation, unincorporated association, charitable or civic organization, or a regular  
1318 fiduciary or trust account where the relationship is established other than by deposit agreement.

1319 (6) (a) "Net contribution" of a party to a joint account as of any given time is the sum  
1320 of all deposits to it made by or for [~~him~~] the party, less all withdrawals made by or for [~~him~~]  
1321 the party which have not been paid to or applied to the use of any other party, plus a pro rata  
1322 share of any interest or dividends included in the current balance. [~~The term~~]

1323 (b) "Net contribution" includes, in addition, any proceeds of deposit life insurance  
1324 added to the account by reason of the death of the party whose net contribution is in question.

1325 (7) (a) "Party" means a person, including a minor, who, by the terms of the account,  
1326 has a present right, subject to request, to payment from a multiple-party account.

1327 (b) A P.O.D. payee or beneficiary of a trust account is a party only after the account

1328 becomes payable to him by reason of his surviving the original payee or trustee and includes a  
1329 guardian, conservator, personal representative, or assignee, including an attaching creditor, of a  
1330 party. [~~It also~~]

1331 (c) "Party" includes a person identified as a trustee of an account for another whether  
1332 or not a beneficiary is named[~~, but it~~].

1333 (d) "Party" does not include any named beneficiary unless [~~he~~] the named beneficiary  
1334 has a present right of withdrawal.

1335 (8) "Payment" of sums on deposit includes withdrawal, payment on check or other  
1336 directive of a party, and any pledge of sums on deposit by a party and any setoff, reduction, or  
1337 other disposition of all or part of an account pursuant to a pledge.

1338 (9) "Proof of death" includes a death certificate or record or report which is prima facie  
1339 proof of death under Section 75-1-107.

1340 (10) "P.O.D. account" means an account payable on request to one person during  
1341 lifetime and on [~~his~~] that person's death to:

1342 (a) one or more P.O.D. payees[~~;~~]; or [~~to~~]

1343 (b) one or more persons during their lifetimes and on the death of all of them to one or  
1344 more P.O.D. payees.

1345 (11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom  
1346 the account is payable on request after the death of one or more persons.

1347 (12) "Request" means a proper request for withdrawal, or a check or order for payment,  
1348 which complies with all conditions of the account, including special requirements concerning  
1349 necessary signatures and regulations of the financial institution; but if the financial institution  
1350 conditions withdrawal or payment on advance notice, for purposes of this part the request for  
1351 withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is  
1352 treated as a request for withdrawal.

1353 (13) "Sums on deposit" means the balance payable on a multiple-party account,  
1354 including interest, dividends, and in addition any deposit life insurance proceeds added to the  
1355 account by reason of the death of a party.

1356 (14) (a) "Trust account" means an account in the name of one or more parties as trustee  
1357 for one or more beneficiaries where the relationship is established by the form of the account  
1358 and the deposit agreement with the financial institution and there is no subject of the trust other

1359 than the sums on deposit in the account; and it is not essential that payment to the beneficiary  
1360 be mentioned in the deposit agreement.

1361 (b) A trust account does not include a regular trust account under a testamentary trust  
1362 or a trust agreement which has significance apart from the account, or a fiduciary account  
1363 arising from a fiduciary relation such as attorney-client.

1364 (15) "Withdrawal" includes payment to a third person pursuant to check or other  
1365 directive of a party.

1366 Section 28. **Uncodified Section 27, Chapter 327, Laws of Utah 2003** is amended to  
1367 read:

1368 Section 27. **Financial Institutions Task Force.**

1369 (1) There is created the Financial Institutions Task Force consisting of the following 12  
1370 members:

1371 (a) five members of the Senate appointed by the president of the Senate, no more than  
1372 four of whom may be from the same political party; and

1373 (b) seven members of the House of Representatives appointed by the speaker of the  
1374 House of Representatives, no more than five of whom may be from the same political party.

1375 (2) (a) The president of the Senate shall designate a member of the Senate appointed  
1376 under Subsection (1)(a) as a cochair of the task force.

1377 (b) The speaker of the House of Representatives shall designate a member of the House  
1378 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

1379 (3) In conducting its business, the task force shall comply with the rules of legislative  
1380 interim committees.

1381 (4) Salaries and expenses of the members of the task force shall be paid in accordance  
1382 with Section 36-2-2 and Legislative Joint Rule 15.03.

1383 (5) The Office of Legislative Research and General Counsel shall provide staff support  
1384 to the task force.

1385 (6) The task force shall study:

1386 (a) the structural differences between credit unions and other financial institutions;

1387 (b) whether to clarify the language defining the appropriate purposes and operations of  
1388 credit unions chartered in this state including what are the appropriate eligibility standards for  
1389 members of a credit union that should be imposed by statute;

- 1390 (c) what should be the appropriate field of membership requirements for a credit union;
- 1391 (d) the policies that should govern all questions applicable to taxing or not taxing
- 1392 nonexempt credit unions;
- 1393 (e) the policies underlying whether or not to tax or assess other fees on banks and
- 1394 nonexempt credit unions;
- 1395 (f) (i) whether or not any credit union should be allowed to pay a competitive equity
- 1396 assessment;
- 1397 (ii) if a credit union is allowed to pay a competitive equity assessment, which credit
- 1398 unions should be allowed to pay a competitive equity assessment; and
- 1399 (iii) how any competitive equity assessment to be paid by a credit union should be
- 1400 calculated including whether required reserves should be subtracted from any of a credit
- 1401 union's annual cash retained earnings of a credit union that may be subject to a competitive
- 1402 equity assessment;
- 1403 (g) if a competitive equity assessment is allowed to be paid by a credit union or if state
- 1404 corporate franchise and income taxes are imposed on nonexempt credit unions, the benefits or
- 1405 restrictions that should be conditioned on the payment of the competitive equity assessment or
- 1406 state corporate franchise and income taxes including:
- 1407 (i) whether or not, to the extent that a bank could extend the credit or to the extent that
- 1408 the extension of credit is not inconsistent with the requirements of National Credit Union
- 1409 Administration, a credit union that pays a competitive equity assessment should be exempted
- 1410 from certain restrictions on extending member-business loans such as the restrictions under:
- 1411 (A) Subsection 7-9-5(12)(b);
- 1412 (B) Subsection 7-9-20(7)(b)(ii), except that certain membership requirements may
- 1413 always need to be required for member-business loans;
- 1414 (C) Subsection 7-9-20(7)(c); and
- 1415 (D) Subsection 7-9-20(8)(b)(ii);
- 1416 (ii) whether or not without payment of a competitive equity assessment a nonexempt
- 1417 credit union should be able to establish a branch that is to be located outside of the county in
- 1418 which the nonexempt credit union has the greatest number of branches;
- 1419 (iii) whether or not, except in supervisory actions, a nonexempt credit union could
- 1420 merge with another credit union without payment of the competitive equity assessment; and

- 1421 (iv) whether or not limitations related to the grandfathering under Section 7-9-53  
1422 should be modified or removed;
- 1423 (h) whether the judicial review process of decisions of the Commissioner of Financial  
1424 Institutions should be modified;
- 1425 (i) (i) the powers and duties of the Commissioner of Financial Institutions to regulate  
1426 the activities of credit unions and banks; and
- 1427 (ii) whether additional powers or duties should be given to the Commissioner of  
1428 Financial Institutions;
- 1429 (j) the effect of a credit union chartered in this state converting to a federal credit union  
1430 charter including any:
- 1431 (i) loss of sales and uses taxes;
- 1432 (ii) loss of fees paid to the Department of Financial Institutions; and
- 1433 (iii) loss of taxes and fees paid to political subdivisions of the state;
- 1434 (k) the methods by which financial institutions in this state may obtain capital;
- 1435 (l) the appropriate lending practices of credit unions including:
- 1436 (i) extension of member-business loans;
- 1437 (ii) extension of credit that does not constitute a member-business loan; and
- 1438 (iii) participation in co-lending arrangements including loan participation  
1439 arrangements; ~~and~~
- 1440 (m) whether one or more of the following should be allowed to be organized as or  
1441 convert to a limited liability company:
- 1442 (i) a bank chartered under Chapter 3, Banks;
- 1443 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan  
1444 Associations Act;
- 1445 (iii) a depository institution holding company; or
- 1446 (iv) a subsidiary of an institution described in Subsections (6)(m)(i) through (iii); and  
1447 ~~(m)~~ (n) any other issues related to financial institutions and credit unions that the task  
1448 force determines to be appropriate.
- 1449 (7) The task force shall:
- 1450 (a) make an interim report to the Business and Labor Interim Committee by no later  
1451 than November 30, 2003; and

1452 (b) make a final report to the Business and Labor Interim Committee, including any  
1453 proposed legislation, by no later than November 30, 2004.

1454 Section 29. **Effective date.**

1455 If approved by two-thirds of all the members elected to each house, this bill takes effect  
1456 upon approval by the governor, or the day following the constitutional time limit of Utah  
1457 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
1458 the date of veto override.

1459 Section 30. **Revisor instructions.**

1460 It is the intent of the Legislature that in preparing the Utah Code database for  
1461 publication the Office of Legislative Research and General Counsel replace the phrase "the  
1462 effective date of this bill" in Section 7-8-21 with the bill's effective date.