

Senator Curtis S. Bramble proposes the following substitute bill:

FINANCIAL INSTITUTIONS AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Kevin S. Garn

Cosponsor: Gene Davis

LONG TITLE

General Description:

This bill modifies the Utah Credit Union Act.

Highlighted Provisions:

This bill:

- ▶ modifies restrictions on member-business loans and loans that are not member-business loans; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-9-20, as last amended by Laws of Utah 2003, Chapter 327

7-9-58, as enacted by Laws of Utah 2003, Chapter 327

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



26 Section 1. Section 7-9-20 is amended to read:

27 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

30 (2) The bylaws may provide balloting by:

31 (a) mail;

32 (b) ballot box; or

33 (c) both mail and ballot box.

34 (3) Voting may not be by proxy.

35 (4) [~~Members~~] A member of the board of directors shall hold office for the [~~terms~~]
36 term prescribed in the bylaws.

37 (5) The board of directors shall meet at least monthly.

38 (6) The board of directors shall have the general management of the affairs, funds, and
39 records of the credit union. In particular, the board of directors shall:

40 (a) act upon [~~applications~~] an application for membership;

41 (b) act upon expulsion of [~~members~~] a member;

42 (c) fix the amount of surety bond required of each officer or employee having custody
43 of funds;

44 (d) determine the rate of interest or dividend allowed on shares and deposits;

45 (e) determine the terms and conditions of credit granted to members;

46 (f) lend money, borrow money, and pledge security for any borrowing;

47 (g) fill [~~vacancies~~] a vacancy in the board of directors or in the credit committee, if
48 applicable, or in the supervisory committee until the election and qualification of [~~officers to~~]
49 fill those vacancies] a person to fill the vacancy;

50 (h) appoint up to two alternate directors as provided in the bylaws;

51 (i) fix the amount of the entrance fee;

52 (j) declare dividends and their amount;

53 (k) make recommendations to meetings of the members relative to amendments to the
54 articles of incorporation, and transact any other business of the credit union; and

55 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
56 any one member, up to the limitations described in Subsections (7) and (8).

57 (7) (a) The credit that may be outstanding or available by a credit union at any one time
58 is subject to the limitations described in this Subsection (7):

59 (i) except as provided in Subsection (8); and

60 (ii) except that the board of directors may:

61 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)~~[(B)]~~[(A)(II)]; or

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

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

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

68 (I) \$1,000; or

69 (II) 15% of capital and surplus up to a total of \$25,000; or

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

71 (I) \$25,000;

72 (II) ~~[1%]~~ 4% of capital and surplus; or

73 (III) 25% of the regular reserve.

74 (ii) (A) Beginning March 24, 1999, a credit union may not extend a member-business
75 loan to a person:

76 ~~[(A)]~~ (I) if the credit union is a successor to or was a credit union described in
77 Subsection 7-9-53(2)(d) as of May 3, 1999:

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

81 ~~[(B)]~~ (Bb) if the person is an individual, unless the individual is a member of the credit
82 union for at least six months prior to the date of the extension of the member-business loan; or

83 ~~[(B)]~~ (II) if as a result of the extension of the member-business loan, the total amount
84 outstanding for all member-business loans that the credit union has extended to that person at
85 any one time exceeds the lesser of:

86 ~~[(A)]~~ (Aa) 10% of the credit union's capital and surplus; or

87 ~~[(B)]~~ (Bb) \$250,000 adjusted as provided in Subsection (7)(b)(ii)(B).

88 (B) The adjustment described in Subsection (7)(b)(ii)(A)(II)(Bb) shall be calculated by
89 the commissioner as follows:

90 (I) beginning May 5, 2008 with the adjustment for calendar year 2008 and for a
91 calendar year beginning on or after January 1, 2009, the commissioner shall increase the dollar
92 amount in Subsection (7)(b)(ii)(A)(II)(Bb) by a percentage equal to the percentage difference
93 between the consumer price index for the preceding calendar year and the consumer price
94 index for calendar year 2006;

95 (II) after the commissioner increases the dollar amount listed in Subsection
96 (7)(b)(ii)(B)(I), the commissioner shall round the dollar amount to the nearest whole dollar;

97 (III) if the percentage difference under Subsection (7)(b)(ii)(B)(I) is zero or a negative
98 percentage, the consumer price index increase for the year is zero; and

99 (IV) for purposes of this Subsection (7)(b)(ii)(B), the commissioner shall calculate the
100 consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

101 (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business
102 loan if as a result of that member-business loan the credit union's aggregate member-business
103 loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum
104 of:

105 (A) the actual undivided earnings; and

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

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

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

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

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

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

116 (d) (i) A credit union service organization may extend credit to a member of a credit
117 union holding an ownership interest in the credit union service organization only if the credit
118 union in which the person is a member is not prohibited from extending that credit to that

119 member under:

120 (A) this Subsection (7) and Subsection (8); or

121 (B) Section 7-9-58.

122 (ii) For purposes of determining whether under this Subsection (7) and Subsection (8) a
123 credit union may extend credit, the total amount outstanding of credit extended by a credit
124 union service organization to a person shall be treated as if the credit was extended by the
125 credit union in which the person is a member.

126 (iii) If a person seeking an extension of credit from a credit union service organization
127 is a member of more than one credit union holding an ownership interest in the credit union
128 service organization, the person shall specify the credit union to which the extension of credit
129 is attributed under Subsection (7)(d)(ii).

130 (iv) This Subsection (7)(d) effects only an extension of credit:

131 (A) that is extended on or after May 5, 2003; and

132 (B) by:

133 (I) a credit union service organization; or

134 (II) a credit union organized under this chapter.

135 (e) Notwithstanding the other provisions of this section, a nonexempt credit union may
136 not extend credit that the nonexempt credit union is prohibited from extending under Section
137 7-9-58.

138 (8) (a) A credit union may extend credit that is not a member-business loan in an
139 amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is
140 fully secured by share or deposit savings in the credit union.

141 (b) (i) Except as provided in Subsection (8)(b)(ii), a credit union may extend a
142 member-business loan in an amount that exceeds the limits described in Subsection
143 (7)(b)(ii)~~(B)~~(A)(II) only if:

144 (A) that portion that is in excess of the limits described in Subsection
145 (7)(b)(ii)~~(B)~~(A)(II) is secured by share or deposit savings in the credit union; or

146 (B) the repayment of that portion that is in excess of the limits described in Subsection
147 (7)(b)(ii)~~(B)~~(A)(II) is insured or guaranteed by, or there is an advance commitment to
148 purchase that excess portion by, an agency of:

149 (I) the federal government;

- 150 (II) a state; or
- 151 (III) a political subdivision of the state.
- 152 (ii) Notwithstanding Subsection (8)(b)(i), a credit union may not extend a
- 153 member-business loan if the total amount financed by the credit union exceeds \$1,000,000.
- 154 (c) For a member-business loan that is extended through a loan participation
- 155 arrangement in accordance with Subsection 7-9-5(12):
- 156 (i) in applying the limitation of Subsection (8)(b), each credit union participating in the
- 157 member-business loan may extend up to \$1,000,000 of the amount financed; and
- 158 (ii) the requirement of Subsection (7)(b)(ii)(A)(I) applies to membership in ~~[any]~~ a
- 159 credit union that:
- 160 (A) participates in the loan participation arrangement for the member-business loan;
- 161 ~~§~~ → **[and]** ← ~~§~~
- 162 (B) ~~§~~ → **is organized under this chapter; and**
- 162a (C) ← ~~§~~ is a successor to or was a credit union described in Subsection 7-9-53(2) ~~§~~ → (d) ← ~~§~~ as of May
- 163 3, 1999.
- 164 (9) As provided in this chapter or in the credit union bylaws, the board of directors:
- 165 (a) within 30 days following the annual meeting of the members, shall appoint a
- 166 supervisory committee consisting of not less than three members;
- 167 (b) within 30 days after the annual meeting of the members, shall appoint:
- 168 (i) a credit committee consisting of not less than three members; or
- 169 (ii) a credit manager in lieu of a credit committee;
- 170 (c) shall appoint a president to serve as general manager;
- 171 (d) shall have an executive committee;
- 172 (e) may appoint an investment officer;
- 173 (f) shall elect a secretary;
- 174 (g) may appoint other officers and committees that it considers necessary;
- 175 (h) shall establish written credit policies, loan security requirements, loan investment,
- 176 personnel, and collection policies; and
- 177 (i) on or before January 31 of each year, shall provide for:
- 178 (i) share insurance for the shares and deposits of the credit union from the National
- 179 Credit Union Administration or successor federal agency; or
- 180 (ii) security expressly pledged for the payment of the shares and deposits in accordance

181 with Section 7-9-45.

182 (10) A person may not be a member of more than one committee except as otherwise
183 provided in this chapter or in the credit union bylaws.

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

185 Section 2. Section 7-9-58 is amended to read:

186 **7-9-58. Limitations on credit extended by nonexempt credit unions.**

187 (1) Notwithstanding the other provisions of this chapter, beginning on May 5, 2003, a
188 nonexempt credit union may not:

189 (a) (i) extend a member-business loan;

190 (ii) renew a member-business loan that is extended before May 5, 2003; or

191 (iii) extend the maturity date or increase the amount of a member-business loan that is
192 extended before May 5, 2003;

193 (b) originate, participate in, or obtain any interest in a co-lending arrangement,
194 including a loan participation arrangement; or

195 (c) subject to Subsection (2), extend credit that is not a member-business loan if as a
196 result of the extension of credit the total credit that is not a member-business loan that the
197 nonexempt credit union has issued to that member exceeds at any one time \$250,000 adjusted
198 as provided in Subsection (1)(d).

199 (d) The adjustment described in Subsection (1)(c) shall be calculated by the
200 commissioner as follows:

201 (i) beginning July 1, 2008 and for a calendar year beginning on or after January 1,
202 2009, the commissioner shall increase or decrease the dollar amount in Subsection (1)(c) by a
203 percentage equal to the percentage difference between the consumer price index for the
204 preceding calendar year and the consumer price index for calendar year 2007;

205 (ii) after the commissioner increases the dollar amount listed in Subsection (1)(c), the
206 commissioner shall round the dollar amount to the nearest whole dollar;

207 (iii) if the percentage difference under Subsection (1)(d)(i) is zero or a negative
208 percentage, the consumer price index increase for the year is zero; and

209 (iv) for purposes of this Subsection (1)(d), the commissioner shall calculate the
210 consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

211 (2) Notwithstanding Subsection (1)(c), a nonexempt credit union may extend credit in

212 an amount that exceeds the limits provided in Subsection (1)(c) to a member if:

213 (a) the excess portion of the credit described in Subsection (1)(c) is fully secured by the
214 member's share or deposit savings in the nonexempt credit union; or

215 (b) the credit is extended to a member of the nonexempt credit union:

216 (i) for the purpose of:

217 (A) paying amounts owed by the member to purchase a one- to four-family dwelling
218 that is the primary residence of that member; or

219 (B) refinancing the balance of amounts owed by the member for the purchase of a one-
220 to four-family dwelling that is the primary residence of that member; and

221 (ii) the credit extended under this Subsection (2)(b) is less than or equals \$1,000,000.

222 (3) In accordance with Subsection 7-9-20(7)(d), a credit union service organization
223 may not extend credit to a member of a nonexempt credit union holding an ownership interest
224 in the credit union service organization if it would be a violation of this section for the
225 nonexempt credit union to extend the credit to the member.

226 (4) This section may not prevent a nonexempt credit union from servicing a loan
227 extended before May 5, 2003.

S.B. 296 1st Sub. (Green) - Financial Institutions Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals local governments. Some businesses may benefit from the ability to make loans sooner.
