

FINANCIAL INSTITUTION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Financial Institutions Act and Financial Institution Mortgage Financing Regulation Act to address powers and duties of the Department of Financial Institutions and persons under the jurisdiction of the Department of Financial Institutions.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ repeals the supervisor of savings and loan associations;
- ▶ creates the supervisor of money services businesses;
- ▶ addresses organization of department;
- ▶ removes a reference to savings and loan from representatives on the Board of Financial Institutions;
- ▶ removes reference to savings and loans associations and related institutions from commissioner's power to establish reasonable classes of depository institutions;
- ▶ removes a reference to savings and loan association from the definition of "class of depository institution" in relationship to debt cancellation and suspension agreements;
- ▶ permits the commissioner to extend approvals related to certain security transactions;



- 28 ▶ addresses use of names by savings and loan associations or saving banks;
- 29 ▶ removes reference to savings and loan association in the section addressing forming
- 30 as a limited liability company;
- 31 ▶ removes reference to savings and loan association and savings bank from entities
- 32 not considered to be banks;
- 33 ▶ exempts persons licensed under Title 31A, Insurance Code, from the chapter on
- 34 escrow;
- 35 ▶ defines "nationwide database";
- 36 ▶ requires entities that engage in business as check cashers, deferred deposit lenders,
- 37 and certain other lenders to file with the Division of Corporations and Commercial
- 38 Code;
- 39 ▶ changes the day on which registration as check cashier or deferred deposit lender
- 40 expires;
- 41 ▶ requires registration by deferred deposit lenders with the nationwide database;
- 42 ▶ grants rulemaking authority to the commissioner to provide for a transition of
- 43 person registering with the nationwide database;
- 44 ▶ removes reference to state-chartered savings and loan associations from list
- 45 addressing permissible investments for designated investors in the Utah fund of
- 46 funds;
- 47 ▶ repeals chapter creating savings and loans associations; and
- 48 ▶ makes technical and conforming changes.

49 **Money Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill provides an effective date.

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **7-1-103**, as last amended by Laws of Utah 2007, Chapter 277

56 **7-1-201**, as last amended by Laws of Utah 2004, Chapter 92

57 **7-1-203**, as last amended by Laws of Utah 2010, Chapter 286

58 **7-1-301**, as last amended by Laws of Utah 2008, Chapters 3 and 382

- 59 **7-1-324**, as last amended by Laws of Utah 2008, Chapter 382
- 60 **7-1-503**, as last amended by Laws of Utah 2004, Chapter 92
- 61 **7-1-701**, as last amended by Laws of Utah 2007, Chapter 277
- 62 **7-1-810 (Superseded 07/01/13)**, as last amended by Laws of Utah 2008, Chapter 382
- 63 **7-1-810 (Effective 07/01/13)**, as last amended by Laws of Utah 2011, Chapter 353
- 64 **7-3-3**, as last amended by Laws of Utah 2007, Chapter 277
- 65 **7-22-101**, as last amended by Laws of Utah 1996, Chapter 182
- 66 **7-23-102**, as last amended by Laws of Utah 2012, Chapter 323
- 67 **7-23-201**, as last amended by Laws of Utah 2012, Chapter 323
- 68 **63M-1-1223**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 69 **70C-8-202**, as last amended by Laws of Utah 2009, Chapter 72
- 70 **76-10-1902**, as last amended by Laws of Utah 2000, Chapter 1

71 ENACTS:

- 72 **7-1-208.3**, Utah Code Annotated 1953

73 REPEALS:

- 74 **7-1-206**, as last amended by Laws of Utah 1994, Chapter 200
- 75 **7-7-1**, as last amended by Laws of Utah 1993, Chapter 4
- 76 **7-7-2**, as last amended by Laws of Utah 2010, Chapter 378
- 77 **7-7-3**, as last amended by Laws of Utah 1987, Chapter 161
- 78 **7-7-3.1**, as last amended by Laws of Utah 1995, Chapter 49
- 79 **7-7-3.2**, as enacted by Laws of Utah 1994, Chapter 200
- 80 **7-7-3.3**, as last amended by Laws of Utah 1995, Chapter 49
- 81 **7-7-4**, as last amended by Laws of Utah 2010, Chapter 378
- 82 **7-7-5**, as last amended by Laws of Utah 1994, Chapter 200
- 83 **7-7-6**, as last amended by Laws of Utah 1995, Chapter 49
- 84 **7-7-7**, as last amended by Laws of Utah 2010, Chapter 378
- 85 **7-7-8**, as last amended by Laws of Utah 1984, Second Special Session, Chapter 5
- 86 **7-7-9**, as last amended by Laws of Utah 1984, Second Special Session, Chapter 5
- 87 **7-7-10**, as last amended by Laws of Utah 2009, Chapter 388
- 88 **7-7-11**, as last amended by Laws of Utah 1985, Chapter 244
- 89 **7-7-12**, as last amended by Laws of Utah 2007, Chapter 306

- 90 **7-7-13**, as last amended by Laws of Utah 1983, Chapter 8
- 91 **7-7-14**, as last amended by Laws of Utah 2010, Chapter 378
- 92 **7-7-15**, as last amended by Laws of Utah 2010, Chapters 324 and 378
- 93 **7-7-16**, as enacted by Laws of Utah 1981, Chapter 16
- 94 **7-7-17**, as last amended by Laws of Utah 2010, Chapter 378
- 95 **7-7-18**, as enacted by Laws of Utah 1981, Chapter 16
- 96 **7-7-19**, as last amended by Laws of Utah 2010, Chapter 378
- 97 **7-7-20**, as last amended by Laws of Utah 1994, Chapter 200
- 98 **7-7-21**, as last amended by Laws of Utah 2010, Chapter 378
- 99 **7-7-22**, as enacted by Laws of Utah 1981, Chapter 16
- 100 **7-7-23**, as last amended by Laws of Utah 1992, Chapter 285
- 101 **7-7-24**, as last amended by Laws of Utah 1983, Chapter 8
- 102 **7-7-25**, as last amended by Laws of Utah 1994, Chapter 200
- 103 **7-7-26**, as last amended by Laws of Utah 2010, Chapter 378
- 104 **7-7-27**, as enacted by Laws of Utah 1981, Chapter 16
- 105 **7-7-28**, as last amended by Laws of Utah 1994, Chapter 200
- 106 **7-7-29**, as last amended by Laws of Utah 2010, Chapter 378
- 107 **7-7-30**, as last amended by Laws of Utah 2010, Chapter 378
- 108 **7-7-31**, as last amended by Laws of Utah 1994, Chapter 200
- 109 **7-7-32**, as last amended by Laws of Utah 2010, Chapter 378
- 110 **7-7-33**, as last amended by Laws of Utah 2010, Chapter 378
- 111 **7-7-34**, as last amended by Laws of Utah 1994, Chapter 200
- 112 **7-7-35**, as enacted by Laws of Utah 1981, Chapter 16
- 113 **7-7-36**, as enacted by Laws of Utah 1981, Chapter 16
- 114 **7-7-38**, as last amended by Laws of Utah 2009, Chapter 356
- 115 **7-7-40**, as last amended by Laws of Utah 1995, Chapter 49
- 116 **7-7-41**, as last amended by Laws of Utah 1994, Chapter 200
- 117 **7-7-42**, as enacted by Laws of Utah 1981, Chapter 16
- 118 **7-7-43**, as last amended by Laws of Utah 2010, Chapter 378
- 119 **7-7-44**, as last amended by Laws of Utah 2008, Chapter 139

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

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

123 **7-1-103. Definitions.**

124 As used in this title:

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

127 (b) "Bank" does not include:

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

129 ~~[(ii) a savings and loan association or savings bank subject to Chapter 7, Savings and
130 Loan Associations Act;]~~

131 ~~[(iii)]~~ (ii) an industrial bank subject to Chapter 8, Industrial Banks;

132 ~~[(iv)]~~ (iii) a federally chartered credit union; or

133 ~~[(v)]~~ (iv) a credit union subject to Chapter 9, Utah Credit Union Act.

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

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

138 (b) "Branch" does not include:

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

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

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

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

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

144 (a) direct or exercise a controlling influence over:

145 (i) the management or policies of a financial institution; or

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

147 (b) vote 20% or more of any class of voting securities of a financial institution by an
148 individual; or

149 (c) vote more than 10% of any class of voting securities of a financial institution by a
150 person other than an individual.

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

- 152 (a) Chapter 9, Utah Credit Union Act; or
- 153 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- 154 (7) "Department" means the Department of Financial Institutions.
- 155 (8) "Depository institution" means a bank, savings and loan association, savings bank,
- 156 industrial bank, credit union, or other institution that:
 - 157 (a) holds or receives deposits, savings, or share accounts;
 - 158 (b) issues certificates of deposit; or
 - 159 (c) provides to its customers other depository accounts that are subject to withdrawal
 - 160 by checks, drafts, or other instruments or by electronic means to effect third party payments.
- 161 (9) (a) "Depository institution holding company" means:
 - 162 (i) a person other than an individual that:
 - 163 (A) has control over any depository institution; or
 - 164 (B) becomes a holding company of a depository institution under Section 7-1-703; or
 - 165 (ii) a person other than an individual that the commissioner finds, after considering the
 - 166 specific circumstances, is exercising or is capable of exercising a controlling influence over a
 - 167 depository institution by means other than those specifically described in this section.
- 168 (b) Except as provided in Section 7-1-703, a person is not a depository institution
- 169 holding company solely because it owns or controls shares acquired in securing or collecting a
- 170 debt previously contracted in good faith.
- 171 (10) "Financial institution" means any institution subject to the jurisdiction of the
- 172 department because of this title.
- 173 (11) (a) "Financial institution holding company" means a person, other than an
- 174 individual that has control over any financial institution or any person that becomes a financial
- 175 institution holding company under this chapter, including an out-of-state or foreign depository
- 176 institution holding company.
 - 177 (b) Ownership of a service corporation or service organization by a depository
 - 178 institution does not make that institution a financial institution holding company.
 - 179 (c) A person holding 10% or less of the voting securities of a financial institution is
 - 180 rebuttably presumed not to have control of the institution.
 - 181 (d) A trust company is not a holding company solely because it owns or holds 20% or
 - 182 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust

183 company exercises a controlling influence over the management or policies of the financial
184 institution.

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

187 (13) "Foreign depository institution holding company" means the holding company of a
188 foreign depository institution.

189 (14) "Home state" means:

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

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

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

195 (15) "Host state" means:

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

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

201 (16) "Industrial bank" means a corporation or limited liability company conducting the
202 business of an industrial bank under Chapter 8, Industrial Banks.

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

204 (18) "Insolvent" means the status of a financial institution that is unable to meet its
205 obligations as they mature.

206 (19) "Institution" means:

207 (a) a corporation;

208 (b) a limited liability company;

209 (c) a partnership;

210 (d) a trust;

211 (e) an association;

212 (f) a joint venture;

213 (g) a pool;

214 (h) a syndicate;

215 (i) an unincorporated organization; or

216 (j) any form of business entity.

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

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

222 (22) "Liquidator" means a person, agency, or instrumentality of this state or the United
223 States appointed to conduct a liquidation.

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

225 ~~[(i) a person holding a savings account of a mutual association;]~~

226 ~~[(ii) a person borrowing from, assuming, or becoming obligated upon a loan or an
227 interest in a loan held by a mutual association; or]~~

228 ~~[(iii) any person or class of persons granted membership rights by the articles of
229 incorporation or the bylaws of an association.];]~~

230 ~~[(b) A joint and survivorship or other multiple owner or borrower relationship
231 constitutes a single membership.];]~~

232 (23) (a) "Money services business" includes:

233 (i) a check casher;

234 (ii) a deferred deposit lender;

235 (iii) an issuer or seller of traveler's checks or money orders; and

236 (iv) a money transmitter.

237 (b) "Money services business" does not include:

238 (i) a bank;

239 (ii) a person registered with, and functionally regulated or examined by the Securities
240 Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial
241 agency that engages in financial activities that, if conducted in the United States, would require
242 the foreign financial agency to be registered with the Securities Exchange Commission or the
243 Commodity Futures Trading Commission; or

244 (iii) an individual who engages in an activity described in Subsection (23)(a) on an

245 infrequent basis and not for gain or profit.

246 (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

247 (25) (a) "NOW account" means a savings account from which the owner may make
248 withdrawals by negotiable or transferable instruments for the purpose of making transfers to
249 third parties.

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

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

253 (26) "Out-of-state" means, in reference to a depository institution or depository
254 institution holding company, an institution or company whose home state is not Utah.

255 (27) "Person" means:

256 (a) an individual;

257 (b) a corporation;

258 (c) a limited liability company;

259 (d) a partnership;

260 (e) a trust;

261 (f) an association;

262 (g) a joint venture;

263 (h) a pool;

264 (i) a syndicate;

265 (j) a sole proprietorship;

266 (k) an unincorporated organization; or

267 (l) any form of business entity.

268 (28) "Receiver" means a person, agency, or instrumentality of this state or the United
269 States appointed to administer and manage an institution subject to the jurisdiction of the
270 department in receivership, as provided in Chapters 2 and 19.

271 (29) "Receivership" means the administration and management of the affairs of an
272 institution subject to the jurisdiction of the department to conserve, preserve, and properly
273 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in
274 Chapters 2 and 19.

275 (30) "Savings account" means any deposit or other account at a depository institution

276 that is not a transaction account.

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

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

280 ~~[(ii) a savings and loan association;]~~

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

282 ~~[(iv) a building and loan association.]~~

283 ~~[(b) "Savings and loan association" includes the following as defined in Section 7-7-2:]~~

284 ~~[(i) all] (a) a federal [associations] savings and loan association; and~~

285 ~~[(ii) all] (b) an out-of-state [associations] savings and loan association.~~

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

289 (33) "State" means, unless the context demands otherwise:

290 (a) a state;

291 (b) the District of Columbia; or

292 (c) the territories of the United States.

293 (34) "Subsidiary" means a business entity under the control of an institution.

294 (35) (a) "Transaction account" means a deposit, account, or other contractual
295 arrangement in which a depositor, account holder, or other customer is permitted, directly or
296 indirectly, to make withdrawals by:

297 (i) check or other negotiable or transferable instrument;

298 (ii) payment order of withdrawal;

299 (iii) telephone transfer;

300 (iv) other electronic means; or

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

303 (b) "Transaction account" includes:

304 (i) demand deposits;

305 (ii) NOW accounts;

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

307 (iv) share draft accounts.

308 (36) "Trust company" means a person authorized to conduct a trust business, as
309 provided in Chapter 5, Trust Business.

310 (37) "Utah depository institution" means a depository institution whose home state is
311 Utah.

312 (38) "Utah depository institution holding company" means a depository institution
313 holding company whose home state is Utah.

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

315 **7-1-201. Creation of department -- Organization.**

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

319 (2) The department organization includes:

320 (a) the commissioner of financial institutions, who shall be the chief executive officer
321 of the department;

322 (b) the Board of Financial Institutions;

323 (c) the chief examiner;

324 (d) the deputy commissioner;

325 [~~(d)~~] (e) the supervisor of banks;

326 [~~(e) the supervisor of savings and loan associations;~~]

327 (f) the supervisor of industrial banks;

328 (g) the supervisor of credit unions; [~~and~~]

329 (h) the supervisor of money services businesses; and

330 [~~(h)~~] (i) other supervisors, examiners, and personnel as may be required to carry out the
331 duties, powers, and responsibilities of the department.

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

333 **7-1-203. Board of Financial Institutions.**

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

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

338 (b) one representative from the [~~savings and loan,~~] consumer lending, [~~mortgage~~
339 ~~brokerage~~] money services business, or escrow agency business;
340 (c) one representative from the industrial bank business;
341 (d) one representative from the credit union business; and
342 (e) one representative of the general public who, as a result of education, training,
343 experience, or interest, is well qualified to consider economic and financial issues and data as
344 they may affect the public interest in the soundness of the financial systems of this state.

345 (2) The commissioner shall act as chair.

346 (3) (a) [~~All members~~] A member of the board shall be [~~residents~~] a resident of this
347 state.

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

349 (c) No more than two members of the board may be connected with the same financial
350 institution or its holding company.

351 (d) A member may not participate in any matter involving [~~any~~] an institution with
352 which the member has a conflict of interest.

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

355 (b) [~~Notwithstanding the requirements of Subsection (4)(a), the~~] The governor shall, at
356 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
357 board members are staggered so that approximately half of the board is appointed every two
358 years.

359 (c) [~~All members serve until their respective successors are~~] A member serves until the
360 member's successor is appointed and qualified.

361 (d) When a vacancy occurs in the membership for any reason, the [~~replacement shall be~~
362 ~~appointed~~] governor shall appoint a replacement for the unexpired term.

363 (5) (a) The board shall meet at least quarterly on a date [~~it~~] the board sets.

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

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

366 (d) Actions of the board require a vote of a majority of those present when a quorum is
367 present.

368 (e) [~~Meetings~~] A meeting of the board and records of [~~its~~] the board's proceedings are

369 subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of
370 confidential information pertaining to a particular financial institution.

371 (6) (a) ~~[Each]~~ A member of the board shall, by sworn or written statement filed with
372 the commissioner, disclose any position of employment or ownership interest that the member
373 has with respect to any institution subject to the jurisdiction of the department.

374 (b) The member shall:

375 (i) file the statement required by this Subsection (6) when first appointed to the board;
376 and

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

379 (7) A member may not receive compensation or benefits for the member's service, but
380 may receive per diem and travel expenses in accordance with:

381 (a) Section 63A-3-106;

382 (b) Section 63A-3-107; and

383 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
384 63A-3-107.

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

386 (a) the exercise of the commissioner's duties, powers, and responsibilities under this
387 title; and

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

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

392 Section 4. Section **7-1-208.3** is enacted to read:

393 **7-1-208.3. Supervisor of money services businesses.**

394 (1) The commissioner shall designate an examiner as supervisor of money services
395 businesses who shall be sufficiently qualified by training and experience in the business of
396 money services businesses or other financial institutions or as an employee of a state or federal
397 agency supervising financial institutions to perform the duties of the office.

398 (2) (a) The supervisor of money services businesses is responsible, subject to the
399 direction and control of the commissioner, for the general supervision and examination of

400 money services businesses subject to the jurisdiction of the department and other institutions as
401 assigned.

402 (b) The supervisor shall:

403 (i) assist and advise the commissioner in the execution of the laws of this state relating
404 to money services businesses; and

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

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

407 **7-1-301. Powers and duties of commissioner -- Rulemaking.**

408 Without limiting the other powers, duties, and responsibilities specified in this title, the
409 commissioner has ~~all~~ the functions, powers, duties, and responsibilities with respect to
410 ~~[institutions, persons, or businesses]~~ an institution, person, or business subject to the
411 jurisdiction of the department contained in this title, including ~~all of~~ the functions, powers,
412 duties, and responsibilities described in Subsections (1) through (15).

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

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

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

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

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

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

429 (ii) the adverse effect on shareholders, members, depositors, and other customers of
430 financial institutions chartered by this state if equal power and protection of those institutions,

431 compared with federally chartered or out-of-state institutions of the same class, are not
432 promptly available.

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

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

438 (i) a new institution;

439 (ii) a new branch;

440 (iii) the relocation of an office or branch;

441 (iv) a merger;

442 (v) a consolidation;

443 (vi) a change in control of an institution or other person subject to the jurisdiction of
444 the department; and

445 (vii) other applications specified in this title.

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

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

454 (b) ~~[Any]~~ An institution that consents to produce records or that is required to produce
455 records in compliance with a subpoena or other order of a court of competent jurisdiction or in
456 compliance with an order obtained pursuant to Sections 7-1-1001 through 7-1-1007 shall be
457 reimbursed for the cost of retrieval and reproduction of the records by the party seeking the
458 information. The commissioner may by rule establish the rates and conditions under which
459 reimbursement is made.

460 (7) (a) The commissioner may classify ~~[a#]~~ the records kept by institutions subject to
461 the jurisdiction of the department and to prescribe the period for which each class of records is

462 retained.

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

465 (c) Rules made under this Subsection (7) shall provide that:

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

470 (ii) ~~Any~~ An institution may keep records in its custody in the form of microfilm or
471 equivalent reproduction. ~~Any such~~ A reproduction ~~shall have~~ has the same force and effect
472 as the original and shall be admissible into evidence as if it were the original.

473 (d) In adopting rules under this Subsection (7), the commissioner shall take into
474 consideration:

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

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

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

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

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

483 (B) the people of this state.

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

486 ~~[(i) savings and loan associations and related institutions;]~~

487 ~~[(ii)]~~ (i) banks and related institutions;

488 ~~[(iii)]~~ (ii) credit unions; and

489 ~~[(iv)]~~ (iii) industrial banks.

490 (b) If the restrictions or requirements the commissioner imposes are not more stringent
491 than those applicable under federal law or regulation to federally chartered institutions of the
492 same class, the commissioner may establish the following for each class in a manner consistent

493 with this title:

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

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

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

501 (iv) minimum liquidity requirements for financial institutions within each class in
502 amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

503 (v) limitations on the amount and type of borrowings by each class of financial
504 institution in relation to the amount of its capital and the character and condition of its assets
505 and its deposits and other liabilities;

506 (vi) limitations on the amount and nature of loans and extensions of credit to ~~any~~ a
507 person or related persons by each class of financial institution in relation to the amount of its
508 capital; and

509 (vii) limitations on the amount and nature of loans and extensions of credit by a
510 financial institution or other person within each class to an executive officer, director, or
511 principal shareholder of:

512 (A) the institution or other person;

513 (B) ~~any~~ a company of which the institution or other person is a subsidiary;

514 (C) ~~any~~ a subsidiary of the institution or other person;

515 (D) ~~any~~ an affiliate of the institution; and

516 (E) a company controlled by an executive officer, director, or principal shareholder of
517 the institution.

518 (9) The commissioner may define unfair trade practices of financial institutions and
519 other persons subject to the jurisdiction of the department and to prohibit or restrict these
520 practices.

521 (10) The commissioner may establish reasonable standards to promote the fair and
522 truthful advertising of:

523 (a) services offered by a financial institution;

524 (b) the charges for the services advertised under Subsection (10)(a);
525 (c) the interest or other compensation to be paid on deposits or any debt instrument
526 offered for sale by the institution;

527 (d) the nature and extent of any:

528 (i) insurance on deposits;

529 (ii) savings accounts;

530 (iii) share accounts;

531 (iv) certificates of deposit;

532 (v) time deposit accounts;

533 (vi) NOW accounts;

534 (vii) share draft accounts;

535 (viii) transaction accounts; or

536 (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by
537 ~~any~~ a financial institution or other person subject to the jurisdiction of the department; and

538 (e) the safety or financial soundness of ~~any~~ a financial institution or other person
539 subject to the jurisdiction of the department.

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

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

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

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

552 (15) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
553 the commissioner may ~~adopt and~~ issue rules consistent with the purposes and provisions of
554 this title, and may revise, amend, or repeal the rules adopted.

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

556 **7-1-324. Debt cancellation agreements and debt suspension agreements.**

557 (1) As used in this section:

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

559 (i) banks;

560 (ii) credit unions;

561 (iii) industrial banks; or

562 [~~(iv) savings and loan associations; or~~]

563 [~~(v)~~] (iv) wholly owned subsidiaries of a depository institution listed in this Subsection

564 (1)(a).

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

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

567 (2) Subject to the other provisions of this section, the commissioner may by rule, made
568 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

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

571 (i) a debt cancellation agreement; or

572 (ii) a debt suspension agreement; and

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

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

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

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

584 (i) the home state of the out-of-state depository institution authorizes and regulates the
585 issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state

586 depository institution; and

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

590 (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described
591 in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section
592 that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in
593 this state by the class of depository institution to which the out-of-state depository institution
594 belongs if the regulations of the out-of-state depository institution's home state do not provide
595 at least the same level of protection with respect to a debt cancellation agreement or debt
596 suspension agreement as the rules adopted by the commissioner under this section with respect
597 to the same class of depository institution:

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

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

601 **7-1-503. Regulation of sale by financial institution of its securities -- Solicitation**
602 **of deposit accounts restricted -- Violations.**

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

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

- 606 (i) a bank;
- 607 (ii) a savings and loan association;
- 608 (iii) a credit union; or
- 609 (iv) an industrial bank;

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

- 612 (i) a bank;
- 613 (ii) a savings and loan association;
- 614 (iii) a credit union; or
- 615 (iv) an industrial bank; or

616 (c) (i) a promissory note or other evidence of indebtedness and the underlying security

617 for it;

618 (ii) a lease of personal property;

619 (iii) a contract to sell real or personal property; or

620 (iv) any other loan or investment sold by a depository institution in the secondary
621 market.

622 (2) (a) A person subject to the jurisdiction of the department may not, directly or
623 indirectly, issue, offer, offer to sell, offer for sale, or sell [~~any~~] a security of which it is the
624 issuer without:

625 [~~(a)~~] (i) the prior approval of the commissioner;

626 [~~(b)~~] (ii) payment of the fee prescribed in Section 7-1-401; and

627 [~~(c)~~] (iii) complying with the rules of the department with respect to securities.

628 (b) The commissioner may extend the approval described in Subsection (2)(a)(i) for
629 one or more additional periods not to exceed six months each:

630 (i) if the person described in Subsection (2)(a) makes written application before the
631 expiration of the period of approval; and

632 (ii) for good cause shown.

633 (3) (a) A person not otherwise subject to the jurisdiction of the department may not
634 issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in
635 [~~any~~] an account or to purchase or invest in [~~any~~] an instrument creating or evidencing a
636 debtor-creditor relationship, if the account or instrument is represented to be an account with or
637 an instrument issued by a financial institution subject to the jurisdiction of the department,
638 without:

639 (i) the prior approval of the commissioner;

640 (ii) payment of the fee prescribed in Section 7-1-401; and

641 (iii) complying with the rules of the department with respect to securities.

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

643 (i) insurance companies that have been issued certificates of authority under Title 31A,
644 Insurance Code;

645 (ii) brokers or dealers registered under:

646 (A) Title 61, Chapter 1, Utah Uniform Securities Act; or

647 (B) the federal Securities Exchange Act of 1934; or

648 (iii) nondepository institutions to the extent that the securities are not offered for sale
649 or sold through or by agents, representatives, officers, or employees of an affiliated Utah
650 depository institution; or

651 (iv) out-of-state depository institution with at least one branch in Utah or otherwise
652 offered for sale or sold on its premises.

653 (4) The rules of the department:

654 (a) shall, at a minimum, require registration with the department; and

655 (b) may require the use of an offering circular containing such material information as
656 to the nature of the security and the financial condition of the issuer as the commissioner may
657 require to protect the public interest.

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

660 Section 8. Section **7-1-701** is amended to read:

661 **7-1-701. Representation and transacting business as financial institution**

662 **restricted -- Restricted names -- Penalty.**

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

664 (a) advertising;

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

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

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

668 other indication that one is transacting business.

669 (2) Unless authorized by the department or an agency of the federal government to do
670 so, it is unlawful for ~~any~~ a person to:

671 (a) transact business as a:

672 (i) bank;

673 (ii) savings and loan association;

674 (iii) savings bank;

675 (iv) industrial bank;

676 (v) credit union;

677 (vi) trust company; or

678 (vii) other financial or depository institution; or

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

680 (3) (a) Except as provided in Subsections (3)(b) through (d), only the following may
681 transact business in this state under a name that includes "bank," "banker," "banking,"
682 "banque," "banc," "banco," "bancorp," "bancorporation," [any] a derivative of these words, or
683 [any other] another word or combination of words reasonably identifying the business of a
684 bank:

685 (i) a national bank;

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

687 (iii) a bank holding company; or

688 (iv) an industrial bank.

689 (b) A person authorized to operate in this state as a credit card bank, as described in
690 Section 7-3-3:

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

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

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

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

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

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

702 (4) (a) Except as provided in Subsection (4)(b), only the following may transact
703 business in this state under a name that includes "savings association," "savings and loan
704 association," "building and loan association," "building association," [any] a derivative of these
705 words, or [any other] another word or combination of words reasonably identifying the
706 business of a savings and loan association:

707 (i) a federal savings and loan association; or

708 (ii) a federal savings bank[; ~~or~~].

709 [~~(iii) a savings and loan association authorized to do business under Chapter 7, Savings~~

710 ~~and Loan Associations Act.]~~

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

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

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

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

716 (c) a depository institution authorized under ~~[state]~~ the law of another state to operate
717 in this state as a savings bank.

718 (6) (a) Only an industrial loan company authorized to do business under Chapter 8,
719 Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state
720 under a name that includes "industrial loan company," "ILC," or ~~[any other]~~ another word,
721 combination of words, or abbreviation reasonably identifying the business of an industrial loan
722 company.

723 (b) Only an industrial bank authorized to do business under Chapter 8, Industrial
724 Banks, may transact business in this state under a name that includes "industrial bank," "thrift,"
725 or ~~[any other]~~ another word, combination of words, or abbreviation reasonably identifying the
726 business of an industrial bank.

727 (7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do
728 business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact
729 business in this state under a name that includes "credit union" or ~~[any other]~~ another word or
730 combination of words reasonably identifying the business of a credit union.

731 (b) The restriction in Subsection (7)(a) does not apply to the Utah League of Credit
732 Unions, ~~[any]~~ a credit union chapter, or ~~[any other]~~ another association affiliated with the Utah
733 League of Credit Unions that restricts its services primarily to credit unions.

734 (8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers
735 under Chapter 5, Trust Business, may transact business in this state under a name that includes
736 "trust," "trustee," "trust company," or ~~[any other]~~ another word or combination of words
737 reasonably identifying the business of a trust company.

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

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

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

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

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

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

752 (10) (a) Upon written request, the commissioner may grant an exemption to this
753 section if the commissioner finds that the use of an otherwise restricted name or word is not
754 reasonably likely to cause confusion or lead the public to believe that the person requesting the
755 exemption is a depository or financial institution or is conducting a business subject to the
756 jurisdiction of the department.

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

760 (11) (a) ~~Each~~ A person and ~~each~~ a principal and officer of a business entity
761 violating this section is guilty of a class A misdemeanor. Each day of violation constitutes a
762 separate offense.

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

767 Section 9. Section **7-1-810 (Superseded 07/01/13)** is amended to read:

768 **7-1-810 (Superseded 07/01/13). Limited liability companies.**

769 (1) Notwithstanding any other provision of this title and subject to Subsection (8), if
770 the conditions of this section are met, the following may be organized as or convert to a limited
771 liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act:

772 (a) an industrial bank chartered under Chapter 8, Industrial Banks;
773 (b) an industrial loan company as defined in Section 7-8-21; or
774 (c) any of the following if the institution is an S Corporation, as defined in Section
775 1361, Internal Revenue Code, immediately before becoming a limited liability company:
776 (i) a bank chartered under Chapter 3, Banks; or
777 [~~(ii) a savings and loan association chartered under Chapter 7, Savings and Loan~~
778 ~~Associations Act; or~~]
779 [(~~iii~~) (ii) a depository institution holding company.
780 (2) (a) Before an institution described in Subsection (1) may organize as or convert to a
781 limited liability company, the institution shall obtain approval of the commissioner.
782 (b) (i) To obtain the approval under this section from the commissioner, the institution
783 shall file a request for approval with the commissioner at least 30 days before the day on which
784 the institution becomes a limited liability company.
785 (ii) If the commissioner does not disapprove the request for approval within 30 days
786 from the day on which the commissioner receives the request, the request is considered
787 approved.
788 (iii) When taking action on a request for approval filed under this section, the
789 commissioner may:
790 (A) approve the request;
791 (B) approve the request subject to terms and conditions the commissioner considers
792 necessary; or
793 (C) disapprove the request.
794 (3) To approve a request for approval, the commissioner shall find:
795 (a) for an institution described in Subsection (1) that is required to be insured by a
796 federal deposit insurance agency, that the institution:
797 (i) will operate in a safe and sound manner;
798 (ii) has the following characteristics:
799 (A) the institution is not subject to automatic termination, dissolution, or suspension
800 upon the happening of some event other than the passage of time;
801 (B) the exclusive authority to manage the institution is vested in a board of managers
802 or directors that:

- 803 (I) is elected or appointed by the owners;
- 804 (II) is not required to have owners of the institution included on the board;
- 805 (III) possesses adequate independence and authority to supervise the operation of the
806 institution; and
- 807 (IV) operates with substantially the same rights, powers, privileges, duties, and
808 responsibilities as the board of directors of a corporation;
- 809 (C) neither state law, nor the institution's operating agreement, bylaws, or other
810 organizational documents provide that an owner of the institution is liable for the debts,
811 liabilities, and obligations of the institution in excess of the amount of the owner's investment;
812 and
- 813 (D) (I) neither state law, nor the institution's operating agreement, bylaws, or other
814 organizational documents require the consent of any other owner of the institution in order for
815 ~~any~~ an owner to transfer an ownership interest in the institution, including voting rights; and
- 816 (II) the institution is able to obtain new investment funding if needed to maintain
817 adequate capital; and
- 818 (iii) is able to comply with all legal and regulatory requirements for an insured
819 depository institution under applicable federal and state law; and
- 820 (b) for an institution described in Subsection (1) that is not required to be insured by a
821 federal deposit insurance agency, that the institution will operate in a safe and sound manner.
- 822 (4) An institution described in Subsection (3)(a) that is organized as a limited liability
823 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it
824 is authorized to conduct business under this title as a limited liability company.
- 825 (5) (a) All rights, privileges, powers, duties, and obligations of an institution described
826 in Subsection (1) that is organized as a limited liability company and its members and
827 managers shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company
828 Act, except:
- 829 (i) the following sections do not apply to an institution that is described in Subsection
830 (3)(a):
- 831 (A) Subsection 48-2c-402(2)(a)(ii);
- 832 (B) Section 48-2c-604;
- 833 (C) Section 48-2c-703;

834 (D) Section 48-2c-708;
835 (E) Subsection 48-2c-801(2);
836 (F) Section 48-2c-1102;
837 (G) Section 48-2c-1104; and
838 (H) Subsections 48-2c-1201(2) through (5); and
839 (ii) as otherwise provided in this title.
840 (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection
841 (3)(a):
842 (i) for purposes of transferring a member's interests in the institution, a member's
843 interest in the institution shall be treated like a share of stock in a corporation; and
844 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to
845 another person, the person who receives the member's interest shall obtain the member's entire
846 rights associated with the member's interest in the institution including:
847 (A) all economic rights; and
848 (B) all voting rights.
849 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise
850 change the application of Subsection (5)(a) to the institution.
851 (6) Unless the context requires otherwise, for the purpose of applying this title to an
852 institution described in Subsection (1) that is organized as a limited liability company:
853 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,
854 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability
855 Company Act;
856 (b) "articles of incorporation" includes a limited liability company's articles of
857 organization as that term is used in Section 48-2c-403;
858 (c) "board of directors" includes one or more persons who have, with respect to an
859 institution described in Subsection (1), authority substantially similar to that of a board of
860 directors of a corporation;
861 (d) "bylaws" includes a limited liability company's operating agreement as that term is
862 defined in Section 48-2c-102;
863 (e) "corporation" includes a limited liability company organized under Title 48,
864 Chapter 2c, Utah Revised Limited Liability Company Act;

- 865 (f) "director" includes any of the following of a limited liability company:
866 (i) a manager;
867 (ii) a director; or
868 (iii) other person who has with respect to the institution described in Subsection (1),
869 authority substantially similar to that of a director of a corporation;
- 870 (g) "dividend" includes distributions made by a limited liability company under Title
871 48, Chapter 2c, Part 10, Distributions;
- 872 (h) "incorporator" includes the organizers of a limited liability company as provided in
873 Title 48, Chapter 2c, Part 4, Formation;
- 874 (i) "officer" includes any of the following of an institution described in Subsection (1):
875 (i) an officer; or
876 (ii) other person who has with respect to the institution described in Subsection (1)
877 authority substantially similar to that of an officer of a corporation;
- 878 (j) "security," "shares," or "stock" of a corporation includes:
879 (i) a membership interest in a limited liability company as provided in Title 48,
880 Chapter 2c, Part 7, Members; and
881 (ii) any certificate or other evidence of an ownership interest in a limited liability
882 company; and
- 883 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution
884 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,
885 Members.
- 886 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
887 commissioner shall make rules governing the form of a request for approval filed under this
888 section.
- 889 (8) A depository institution organized under the laws of this state may not be organized
890 as or converted to a series of members, managers, or interests in a limited liability company as
891 provided in Section 48-2c-606.
- 892 Section 10. Section **7-1-810 (Effective 07/01/13)** is amended to read:
893 **7-1-810 (Effective 07/01/13). Limited liability companies.**
894 (1) Notwithstanding any other provision of this title and subject to Subsection (8), if
895 the conditions of this section are met, the following may be organized as or convert to a limited

896 liability company under Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company
897 Act:

- 898 (a) an industrial bank chartered under Chapter 8, Industrial Banks;
- 899 (b) an industrial loan company as defined in Section 7-8-21; or
- 900 (c) any of the following if the institution is an S Corporation, as defined in Section
901 1361, Internal Revenue Code, immediately before becoming a limited liability company:

- 902 (i) a bank chartered under Chapter 3, Banks; or
- 903 [~~(ii) a savings and loan association chartered under Chapter 7, Savings and Loan~~
904 ~~Associations Act, or]~~
- 905 [~~(iii)~~] (ii) a depository institution holding company.

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

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

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

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

- 916 (A) approve the request;
- 917 (B) approve the request subject to terms and conditions the commissioner considers
918 necessary; or
- 919 (C) disapprove the request.

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

- 921 (a) for an institution described in Subsection (1) that is required to be insured by a
922 federal deposit insurance agency, that the institution:
 - 923 (i) will operate in a safe and sound manner;
 - 924 (ii) has the following characteristics:
 - 925 (A) the institution is not subject to automatic termination, dissolution, or suspension
926 upon the happening of some event other than the passage of time;

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

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

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

931 (III) possesses adequate independence and authority to supervise the operation of the
932 institution; and

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

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

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

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

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

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

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

951 (5) (a) All rights, privileges, powers, duties, and obligations of an institution described
952 in Subsection (1) that is organized as a limited liability company and its members and
953 managers shall be governed by Title 48, Chapter 3, Utah Revised Uniform Limited Liability
954 Company Act, except:

955 (i) the following do not apply to an institution that is described in Subsection (3)(a):

956 (A) Section 48-3-110;

957 (B) Section 48-3-112;

- 958 (C) Section 48-3-201;
- 959 (D) Section 48-3-401;
- 960 (E) Subsections 48-3-407(1) and (3)(d);
- 961 (F) Section 48-3-410;
- 962 (G) Subsection 48-3-502(1)(c);
- 963 (H) Title 48, Chapter 3, Part 6, Member's Dissociation;
- 964 (I) Section 48-3-701; and
- 965 (J) Title 48, Chapter 3, Part 8, Foreign Limited Liability Companies; and
- 966 (ii) as otherwise provided in this title.
- 967 (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection
- 968 (3)(a):
 - 969 (i) for purposes of transferring a member's interests in the institution, a member's
 - 970 interest in the institution shall be treated like a share of stock in a corporation; and
 - 971 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to
 - 972 another person, the person who receives the member's interest shall obtain the member's entire
 - 973 rights associated with the member's interest in the institution including:
 - 974 (A) all economic rights; and
 - 975 (B) all voting rights.
 - 976 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise
 - 977 change the application of Subsection (5)(a) to the institution.
 - 978 (6) Unless the context requires otherwise, for the purpose of applying this title to an
 - 979 institution described in Subsection (1) that is organized as a limited liability company:
 - 980 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,
 - 981 includes the equivalent citation to Title 48, Chapter 3, Utah Revised Uniform Limited Liability
 - 982 Company Act;
 - 983 (b) "articles of incorporation" includes a limited liability company's certificate of
 - 984 organization as that term is used in Section 48-3-201;
 - 985 (c) "board of directors" includes one or more persons who have, with respect to an
 - 986 institution described in Subsection (1), authority substantially similar to that of a board of
 - 987 directors of a corporation;
 - 988 (d) "bylaws" includes a limited liability company's operating agreement as that term is

989 defined in Section 48-3-102;

990 (e) "corporation" includes a limited liability company organized under Title 48,

991 Chapter 3, Utah Revised Uniform Limited Liability Company Act;

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

993 (i) a manager;

994 (ii) a director; or

995 (iii) other person who has with respect to the institution described in Subsection (1),

996 authority substantially similar to that of a director of a corporation;

997 (g) "dividend" includes distributions made by a limited liability company under Title

998 48, Chapter 3, Part 4, Relations of Members to Each Other and to Limited Liability Company;

999 (h) "incorporator" includes an organizer of a limited liability company as provided in

1000 Title 48, Chapter 3, Part 2, Formation - Certificate of Organization and Other Filings;

1001 (i) "officer" includes any of the following of an institution described in Subsection (1):

1002 (i) an officer; or

1003 (ii) other person who has with respect to the institution described in Subsection (1)

1004 authority substantially similar to that of an officer of a corporation;

1005 (j) "security," "shares," or "stock" of a corporation includes:

1006 (i) a membership interest in a limited liability company as provided in Title 48,

1007 Chapter 3, Part 4, Relations of Members to Each Other and to Limited Liability Company; and

1008 (ii) a certificate or other evidence of an ownership interest in a limited liability

1009 company; and

1010 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution

1011 described in Subsection (1) including a member as provided in Title 48, Chapter 3, Part 4,

1012 Relations of Members to Each Other and to Limited Liability Company.

1013 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1014 commissioner shall make rules governing the form of a request for approval filed under this

1015 section.

1016 (8) A depository institution organized under the laws of this state may not be organized

1017 as or converted to a series of transferable interests in a limited liability company as provided in

1018 Title 48, Chapter 3, Part 12, Series Limited Liability Companies.

1019 Section 11. Section **7-3-3** is amended to read:

1020 **7-3-3. "Banking business" defined -- Credit card banks -- Insurance of deposit**
 1021 **accounts.**

1022 (1) (a) Except as provided under Subsection (1)(b), a person is considered to be
 1023 conducting a banking business and is a bank subject to the provisions of this title that are
 1024 applicable to banks if the person is authorized:

1025 (i) under the laws of this:

1026 (A) state;

1027 (B) another state;

1028 (C) the United States;

1029 (D) the District of Columbia; or

1030 (E) ~~any~~ a territory of the United States; and

1031 (ii) (A) to accept deposits from the public; and

1032 (B) to conduct such other business activities as may be authorized by statute or by the
 1033 commissioner in accordance with Subsection 7-3-10(3).

1034 (b) A person is not considered to be a bank subject to the provisions of this title that are
 1035 applicable to banks if the person is authorized to conduct the business of:

1036 (i) a federal savings and loan association;

1037 (ii) a federal savings bank;

1038 ~~[(iii) a savings and loan association subject to Chapter 7, Savings and Loan~~
 1039 ~~Associations Act;]~~

1040 ~~[(iv) a savings bank subject to Chapter 7, Savings and Loan Associations Act;]~~

1041 ~~[(v)]~~ (iii) an industrial bank subject to Chapter 8, Industrial Banks;

1042 ~~[(vi)]~~ (iv) a federally chartered credit union; or

1043 ~~[(vii)]~~ (v) a credit union subject to Chapter 9, Utah Credit Union Act.

1044 (2) A person authorized to operate as a bank in this state may operate as a credit card
 1045 bank if it:

1046 (a) engages only in credit card operations;

1047 (b) does not accept demand deposits or deposits that the depositor may withdraw by
 1048 check or similar means for payment to third parties or others;

1049 (c) does not accept ~~any~~ a savings or time deposits of less than \$100,000;

1050 (d) maintains only one office that accepts deposits; and

1051 (e) does not engage in the business of making commercial loans.

1052 (3) All deposit accounts in banks or branches subject to the jurisdiction of the
1053 department shall be insured by the Federal Deposit Insurance Corporation or [~~any~~] a successor
1054 to the Federal Deposit Insurance Corporation.

1055 Section 12. Section **7-22-101** is amended to read:

1056 **7-22-101. Definitions -- Exemptions.**

1057 (1) As used in this chapter:

1058 (a) "Escrow" means [~~any~~] an agreement, express or implied, that provides for one or
1059 more parties to deliver or entrust [~~any~~] money, a certificate of deposit, a security, a negotiable
1060 instrument, a deed, or other property or asset to another person to be held, paid, or delivered in
1061 accordance with terms and conditions prescribed in the agreement.

1062 (b) "Escrow agent" means [~~any~~] a person that provides or offers to provide escrow
1063 services to the public.

1064 (2) This chapter does not apply to:

1065 (a) a trust [~~companies~~] company authorized to engage in the trust business in Utah in
1066 accordance with [~~Title 7,~~] Chapter 5, Trust Business;

1067 (b) [~~persons~~] a person other than an escrow [~~agents~~] agent regulated under this chapter
1068 that [~~are~~] is exempted from the definition of trust business in Subsection 7-5-1(1);

1069 (c) a depository [~~institutions~~] institution chartered by a state or the federal government
1070 that [~~are~~] is engaged in business as a depository institution in Utah; [~~and~~]

1071 (d) the State Board of Regents, the Utah Higher Education Assistance Authority, or the
1072 State Treasurer[~~;~~]; and

1073 (e) a person licensed under Title 31A, Insurance Code.

1074 Section 13. Section **7-23-102** is amended to read:

1075 **7-23-102. Definitions.**

1076 As used in this chapter:

1077 (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as
1078 implemented by regulations issued under that section.

1079 (2) "Business of cashing checks" means cashing a check for consideration.

1080 (3) "Business of deferred deposit lending" means extending a deferred deposit loan.

1081 (4) "Check" is as defined in Section 70A-3-104.

1082 (5) "Check casher" means a person that engages in the business of cashing checks.

1083 (6) "Deferred deposit lender" means a person that engages in the business of deferred
1084 deposit lending.

1085 (7) "Deferred deposit loan" means a transaction where:

1086 (a) a person:

1087 (i) presents to a deferred deposit lender a check written on that person's account; or

1088 (ii) provides written or electronic authorization to a deferred deposit lender to effect a
1089 debit from that person's account using an electronic payment; and

1090 (b) the deferred deposit lender:

1091 (i) provides the person described in Subsection (7)(a) an amount of money that is equal
1092 to the face value of the check or the amount of the debit less any fee or interest charged for the
1093 transaction; and

1094 (ii) agrees not to cash the check or process the debit until a specific date.

1095 (8) (a) "Electronic payment" means an electronic method by which a person:

1096 (i) accepts a payment from another person; or

1097 (ii) makes a payment to another person.

1098 (b) "Electronic payment" includes a payment made through:

1099 (i) an automated clearing house transaction;

1100 (ii) an electronic check;

1101 (iii) a stored value card; or

1102 (iv) an Internet transfer.

1103 (9) "Nationwide database" means the Nationwide Mortgage Licensing System and
1104 Registry, authorized under federal licensing requirements for mortgage loan originators.

1105 [~~9~~] (10) "Rollover" means the extension or renewal of the term of a deferred deposit
1106 loan.

1107 Section 14. Section **7-23-201** is amended to read:

1108 **7-23-201. Registration -- Rulemaking.**

1109 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the
1110 business of deferred deposit lending in Utah or with a Utah resident unless the person:

1111 (i) registers with the department in accordance with this chapter; and

1112 (ii) maintains a valid registration.

1113 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
1114 business of:

- 1115 (i) cashing checks; or
- 1116 (ii) deferred deposit lending.

1117 (2) (a) A registration and a renewal of a registration expires on [~~April 30~~] December 31
1118 of each year unless on or before that date the person renews the registration.

1119 (b) To register under this section, a person shall:

- 1120 (i) pay an original registration fee established under Subsection 7-1-401(8); [~~and~~]
- 1121 (ii) submit a registration statement containing the information described in Subsection
1122 (2)(d)[~~];~~

1123 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
1124 conduct business in this state as a domestic or foreign entity pursuant to filings with the
1125 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
1126 Partnership; and

1127 (iv) if the person engages in the business of deferred deposit lending, submit evidence
1128 satisfactory to the commissioner that the person is registered with the nationwide database.

1129 (c) To renew a registration under this section, a person shall:

- 1130 (i) pay the annual fee established under Subsection 7-1-401(5);
- 1131 (ii) submit a renewal statement containing the information described in Subsection
1132 (2)(d); [~~and~~]

1133 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
1134 conduct business in this state as a domestic or foreign entity pursuant to filings with the
1135 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
1136 Partnership;

1137 (iv) if the person engages in the business of deferred deposit lending, submit evidence
1138 satisfactory to the commissioner that the person is registered with the nationwide database; and

1139 [~~(iii)~~] (v) if the person engages in the business of deferred deposit lending, submit an
1140 operations statement containing the information described in Subsection (2)(e).

1141 (d) A registration or renewal statement shall state:

- 1142 (i) the name of the person;
- 1143 (ii) the name in which the business will be transacted if different from that required in

1144 Subsection (2)(d)(i);
1145 (iii) the address of the person's principal business office, which may be outside this
1146 state;
1147 (iv) the addresses of all offices in this state at which the person conducts the business
1148 of:
1149 (A) cashing checks; or
1150 (B) deferred deposit lending;
1151 (v) if the person conducts the business of cashing checks or the business of deferred
1152 deposit lending in this state but does not maintain an office in this state, a brief description of
1153 the manner in which the business is conducted;
1154 (vi) the name and address in this state of a designated agent upon whom service of
1155 process may be made;
1156 (vii) disclosure of [~~any~~] an injunction, judgment, administrative order, or conviction of
1157 [~~any~~] a crime involving moral turpitude with respect to that person or [~~any~~] an officer, director,
1158 manager, operator, or principal of that person; and
1159 (viii) any other information required by the rules of the department.
1160 (e) An operations statement required for a deferred deposit lender to renew a
1161 registration shall state for the immediately preceding calendar year:
1162 (i) the average principal amount of the deferred deposit loans extended by the deferred
1163 deposit lender;
1164 (ii) for deferred deposit loans paid in full, the average number of days a deferred
1165 deposit loan is outstanding for the duration of time that interest is charged;
1166 (iii) the minimum and maximum dollar amount of interest and fees charged by the
1167 deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;
1168 (iv) the total number of deferred deposit loans rescinded by the deferred deposit lender
1169 at the request of the customer pursuant to Subsection 7-23-401(3)(b);
1170 (v) of the persons to whom the deferred deposit lender extended a deferred deposit
1171 loan, the percentage that entered into an extended payment plan under Section 7-23-403;
1172 (vi) the total dollar amount of deferred deposit loans rescinded by the deferred deposit
1173 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
1174 (vii) the average annual percentage rate charged on deferred deposit loans; and

1175 (viii) the average dollar amount of extended payment plans entered into under Section
1176 7-23-403 by the deferred deposit lender.

1177 (f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,
1178 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the
1179 nationwide database.

1180 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

1181 (a) confidential in accordance with Section 7-1-802; and

1182 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
1183 Act.

1184 (4) (a) The commissioner may impose an administrative fine determined under
1185 Subsection (4)(b) on a person if:

1186 (i) the person is required to be registered under this chapter;

1187 (ii) the person fails to register or renew a registration in accordance with this chapter;

1188 (iii) the department notifies the person that the person is in violation of this chapter for
1189 failure to be registered; and

1190 (iv) the person fails to register within 30 days after the day on which the person
1191 receives the notice described in Subsection (4)(a)(iii).

1192 (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

1193 (i) \$500 if the person:

1194 (A) has no office in this state at which the person conducts the business of:

1195 (I) cashing checks; or

1196 (II) deferred deposit lending; or

1197 (B) has one office in this state at which the person conducts the business of:

1198 (I) cashing checks; or

1199 (II) deferred deposit lending; or

1200 (ii) if the person has two or more offices in this state at which the person conducts the
1201 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
1202 which the person conducts the business of:

1203 (A) cashing checks; or

1204 (B) deferred deposit lending.

1205 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if

1206 the person shows good cause.

1207 (5) If the information in a registration, renewal, or operations statement required under
1208 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
1209 until:

1210 (a) that person is required to renew the registration; or

1211 (b) the department specifically requests earlier notification.

1212 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1213 department may make rules consistent with this section providing for:

1214 (a) the form, content, and filing of a registration and renewal statement described in
1215 Subsection (2)(d); and

1216 (b) the form and filing of an operations statement described in Subsection (2)(e).

1217 (7) A deferred deposit loan that is made by a person who is required to be registered
1218 under this chapter but who is not registered is void, and the person may not collect, receive, or
1219 retain any principal or other interest or fees in connection with the deferred deposit loan.

1220 Section 15. Section **63M-1-1223** is amended to read:

1221 **63M-1-1223. Permissible investments.**

1222 Investments by designated investors in the Utah fund of funds are permissible
1223 investments under applicable laws of the state for:

1224 (1) state-chartered banks;

1225 [~~(2) state-chartered savings and loan associations;~~]

1226 [~~(3)~~] (2) state-chartered credit unions;

1227 [~~(4)~~] (3) state-chartered industrial banks; and

1228 [~~(5)~~] (4) domestic insurance companies.

1229 Section 16. Section **70C-8-202** is amended to read:

1230 **70C-8-202. Notification.**

1231 (1) (a) A party who is subject to this part shall file notification with the department at
1232 least 30 days before commencing business in this state.

1233 (b) After filing the notification required by Subsection (1)(a), a party shall file a
1234 notification on or before January 31 of each year.

1235 (c) A notification required by this Subsection (1) shall [state]:

1236 (i) state the name of the party;

- 1237 (ii) state the name in which the business is transacted if different from that required in
1238 Subsection (1)(c)(i);
- 1239 (iii) state the address of the party's principal office, which may be outside this state;
- 1240 (iv) state the address of:
- 1241 (A) each office or retail store, if any, in this state at which credit is offered or extended
1242 to a consumer; or
- 1243 (B) in the case of a party taking an assignment of an obligation, each office or place of
1244 business within this state at which business is transacted;
- 1245 (v) if credit is extended to a consumer other than at an office or retail store in this state,
1246 state a brief description of the manner in which the credit transaction occurs;
- 1247 (vi) state the name and address in this state of a designated agent upon whom service of
1248 process may be made; [~~and~~]
- 1249 (vii) submit evidence satisfactory to the commissioner that the person is authorized to
1250 conduct business in this state as a domestic or foreign entity pursuant to filings with the
1251 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
1252 Partnerships; and
- 1253 [~~(vii)~~] (viii) provide any other information considered pertinent by the department.
- 1254 (2) If information in a notification becomes inaccurate after filing, a party is not
1255 required to file further notification until required to renew the party's notification.
- 1256 (3) (a) A party who fails to file a notification or pay a fee required by this part may not
1257 extend credit to a consumer in this state until the party fully complies with this part.
- 1258 (b) A party who willfully violates this Subsection (3) is guilty of a class B
1259 misdemeanor.
- 1260 Section 17. Section **76-10-1902** is amended to read:
- 1261 **76-10-1902. Definitions.**
- 1262 As used in this part:
- 1263 (1) "Bank" means [~~each~~] an agent, agency, or office in this state of [~~any~~] a person
1264 doing business in any one of the following capacities:
- 1265 (a) a commercial bank or trust company organized under the laws of this state or of the
1266 United States;
- 1267 (b) a private bank;

1268 (c) a savings and loan association or a building and loan association organized under
1269 the laws [~~of this state or~~] of the United States;

1270 (d) an insured institution as defined in Section 401 of the National Housing Act;

1271 (e) a savings bank, industrial bank, or other thrift institution;

1272 (f) a credit union organized under the laws of this state or of the United States; or

1273 (g) any other organization chartered under Title 7, Financial Institutions, and subject to
1274 the supervisory authority set forth in that title.

1275 (2) "Conducts" includes initiating, concluding, or participating in initiating or
1276 concluding a transaction.

1277 (3) (a) "Currency" means the coin and paper money of the United States or of [~~any~~
1278 ~~other~~] another country that is designated as legal tender, that circulates, and is customarily used
1279 and accepted as a medium of exchange in the country of issuance.

1280 (b) "Currency" includes United States silver certificates, United States notes, Federal
1281 Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange
1282 in a foreign country.

1283 (4) "Financial institution" means [~~any~~] an agent, agency, branch, or office within this
1284 state of [~~any~~] a person doing business, whether or not on a regular basis or as an organized
1285 business concern, in one or more of the following capacities:

1286 (a) a bank, except bank credit card systems;

1287 (b) a broker or dealer in securities;

1288 (c) a currency dealer or exchanger, including a person engaged in the business of check
1289 cashing;

1290 (d) an issuer, seller, or redeemer of travelers checks or money orders, except as a
1291 selling agent exclusively who does not sell more than \$150,000 of the instruments within any
1292 30-day period;

1293 (e) a licensed transmitter of funds or other person engaged in the business of
1294 transmitting funds;

1295 (f) a telegraph company;

1296 (g) a person subject to supervision by [~~any~~] a state or federal supervisory authority; or

1297 (h) the United States Postal Service regarding the sale of money orders.

1298 (5) "Financial transaction" means a transaction:

1299 (a) involving the movement of funds by wire or other means or involving one or more
1300 monetary instruments, which in any way or degree affects commerce; or

1301 (b) involving the use of a financial institution that is engaged in, or its activities affect
1302 commerce in any way or degree.

1303 (6) The phrase "knows that the property involved represents the proceeds of some form
1304 of unlawful activity" means that the person knows or it was represented to the person that the
1305 property involved represents proceeds from a form of activity, although the person does not
1306 necessarily know which form of activity, that constitutes a crime under state or federal law,
1307 regardless of whether or not the activity is specified in Subsection (12).

1308 (7) "Monetary instruments" means coins or currency of the United States or of [~~any~~
1309 ~~other~~] another country, travelers checks, personal checks, bank checks, money orders, and
1310 investment securities or negotiable instruments in bearer form or in other form so that title
1311 passes upon delivery.

1312 (8) "Person" means an individual, corporation, partnership, trust or estate, joint stock
1313 company, association, syndicate, joint venture, or other unincorporated organization or group,
1314 and all other entities cognizable as legal personalities.

1315 (9) "Proceeds" means property acquired or derived directly or indirectly from,
1316 produced through, realized through, or caused by an act or omission and includes [~~any~~]
1317 property of any kind.

1318 (10) "Property" means anything of value, and includes [~~any~~] an interest in property,
1319 including [~~any~~] a benefit, privilege, land, or right with respect to anything of value, whether
1320 real or personal, tangible or intangible.

1321 (11) "Prosecuting agency" means the office of the attorney general or the office of the
1322 county attorney, including [~~any~~] an attorney on the staff whether acting in a civil or criminal
1323 capacity.

1324 (12) "Specified unlawful activity" means [~~any~~] an unlawful activity defined as an
1325 unlawful activity in Section 76-10-1602, except an illegal act under Title 18, Section
1326 1961(1)(B), (C), and (D), United States Code, and includes activity committed outside this
1327 state which, if committed within this state, would be unlawful activity.

1328 (13) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other
1329 disposition. With respect to a financial institution, "transaction" includes a deposit,

1330 withdrawal, transfer between accounts, exchange of currency, loan, extension of credit,
1331 purchase or sale of [any] a stock, bond, certificate of deposit, or other monetary instrument, or
1332 any other payment, transfer, or delivery by, through, or to a financial institution, by whatever
1333 means effected.

1334 (14) "Transaction in currency" means a transaction involving the physical transfer of
1335 currency from one person to another. A transaction that is a transfer of funds by means of bank
1336 check, bank draft, wire transfer, or other written order that does not include the physical
1337 transfer of currency is not a transaction in currency under this chapter.

1338 Section 18. **Repealer.**

1339 This bill repeals:

1340 Section **7-1-206, Supervisor of savings and loan associations -- Responsibilities.**

1341 Section **7-7-1, Citation of chapter -- Application of Utah Revised Business**

1342 **Corporation Act.**

1343 Section **7-7-2, Definitions.**

1344 Section **7-7-3, Incorporators -- Certificate of authority -- Articles of incorporation**

1345 **-- Amendment -- Bylaws -- Liability for debts of association.**

1346 Section **7-7-3.1, Limitation of personal liability of directors.**

1347 Section **7-7-3.2, General limitation on liability.**

1348 Section **7-7-3.3, Deposit insurance required.**

1349 Section **7-7-4, Mutual association -- Chair of incorporators -- Surety bond or**

1350 **escrow -- Capital requirements -- Expense fund -- Organization meeting.**

1351 Section **7-7-5, Capital stock association -- Chair of incorporators -- Surety bond or**

1352 **escrow -- Capital requirements -- Surplus -- Acquisition of own stock -- Organization**

1353 **meeting.**

1354 Section **7-7-6, Name requirements -- Establishment or changing location of offices.**

1355 Section **7-7-7, Conversion of associations.**

1356 Section **7-7-8, Reorganization, merger or consolidation of association.**

1357 Section **7-7-9, Dissolution of association.**

1358 Section **7-7-10, Meetings of mutual association members -- Voting -- Notice.**

1359 Section **7-7-11, Meetings of stock association stockholders -- Voting -- Notice.**

1360 Section **7-7-12, Inspection of books and records -- Confidentiality --**

- 1361 **Communication between members or stockholders.**
- 1362 Section 7-7-13, Board of directors -- Number -- Election -- Qualifications --
- 1363 **Disqualification -- Terms -- Vacancies -- Removal.**
- 1364 Section 7-7-14, Bonding of directors, officers, employees, and collection agents.
- 1365 Section 7-7-15, Fiduciary relationship of directors and officers to association --
- 1366 **Disclosure requirements -- Prohibitions -- Violations as misdemeanors.**
- 1367 Section 7-7-16, Depositories used by associations.
- 1368 Section 7-7-17, Indemnification of directors, officers, and employees.
- 1369 Section 7-7-18, Operating or management contract terms.
- 1370 Section 7-7-19, Record and accounting requirements -- Valuation of assets.
- 1371 Section 7-7-20, Reserve and net worth requirements.
- 1372 Section 7-7-21, Powers of associations.
- 1373 Section 7-7-22, Savings accounts -- Liabilities -- Opening -- Relationship between
- 1374 **association and account holder -- Earnings -- Preferences -- Types of accounts.**
- 1375 Section 7-7-23, Savings accounts as legal investments and as deposits.
- 1376 Section 7-7-24, Earnings on savings accounts.
- 1377 Section 7-7-25, Withdrawal or transfer of savings accounts.
- 1378 Section 7-7-26, Redemption of savings accounts.
- 1379 Section 7-7-27, Liquidity prerequisite for loans and investments.
- 1380 Section 7-7-28, Investments by associations.
- 1381 Section 7-7-29, Investment in service organizations, business development credit
- 1382 **corporations, and service corporations.**
- 1383 Section 7-7-30, Investment in property used in conduct of business -- Investment in
- 1384 **manner not prohibited by law.**
- 1385 Section 7-7-31, Investment in real estate for sale or income production -- Purchase
- 1386 **of real estate securing loan.**
- 1387 Section 7-7-32, Agreements committing assets to lines of credit -- Stock ownership
- 1388 **or affiliation with credit card companies.**
- 1389 Section 7-7-33, Investments in loans -- Payments to protect real estate loans --
- 1390 **Requiring borrower to pay taxes, insurance, and other charges on real estate in advance.**
- 1391 Section 7-7-34, Charging borrower for expenses and services for real estate loan.

1392 Section 7-7-35, Sale of real estate securities -- Dealing with buyer -- Liability of
1393 original borrower.

1394 Section 7-7-36, Actions necessary to avoid loss on loans and investments.

1395 Section 7-7-38, Reports and examinations required -- Access to records.

1396 Section 7-7-40, Federal associations.

1397 Section 7-7-41, Additional powers of associations belonging to federal home loan
1398 bank system.

1399 Section 7-7-42, Members, stockholders or employees not disqualified to take
1400 acknowledgments or proofs.

1401 Section 7-7-43, Previously incorporated associations.

1402 Section 7-7-44, Chapter controls over inconsistent laws.

1403 Section 19. Effective date.

1404 (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.

1405 (2) The actions affecting Section 7-1-810 (Effective 07/01/13) take effect on July 1,
1406 2013.

Legislative Review Note
as of 1-29-13 12:15 PM

Office of Legislative Research and General Counsel