

1 **DEPARTMENT OF FINANCIAL INSTITUTIONS RELATED**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Val L. Peterson**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to financial institutions under the jurisdiction of the
11 department.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definitions;
- 15 ▶ permits the delegation of powers and duties under certain circumstances;
- 16 ▶ changes the supervisor of trust to the supervisor of holding companies;
- 17 ▶ modifies restrictions on acquisition of institutions and holding companies; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **7-1-103**, as last amended by Laws of Utah 2016, Chapter 288

26 **7-1-201**, as last amended by Laws of Utah 2013, Chapter 73

27 **7-1-208.1**, as enacted by Laws of Utah 1989, Chapter 267

28 **7-1-209**, as last amended by Laws of Utah 1994, Chapter 200

29 **7-1-703**, as last amended by Laws of Utah 2014, Chapter 189

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **7-1-103** is amended to read:33 **7-1-103. Definitions.**

34 As used in this title:

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

37 (b) "Bank" does not include:

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

39 (ii) an industrial bank subject to Chapter 8, Industrial Banks;

40 (iii) a federally chartered credit union; or

41 (iv) a credit union subject to Chapter 9, Utah Credit Union Act.

42 (2) "Banking business" means the offering of deposit accounts to the public and the
43 conduct of such other business activities as may be authorized by this title.44 (3) (a) "Branch" means a place of business of a financial institution, other than its main
45 office, at which deposits are received and paid.

46 (b) "Branch" does not include:

47 (i) an automated teller machine, as defined in Section [7-16a-102](#);48 (ii) a point-of-sale terminal, as defined in Section [7-16a-102](#); or49 (iii) a loan production office under Section [7-1-715](#).

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

51 (5) "Control" means the power, directly or indirectly, or through or in concert with one
52 or more persons, to:

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

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

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

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

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

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

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

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

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

64 (8) "Depository institution" means a bank, savings and loan association, savings bank,
65 industrial bank, credit union, or other institution that:

66 (a) holds or receives deposits, savings, or share accounts;

67 (b) issues certificates of deposit; or

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

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

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

72 (A) has control over ~~[any]~~ a depository institution; or

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

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

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

80 (10) "Financial institution" means ~~[any]~~ an institution subject to the jurisdiction of the
81 department because of this title.

82 (11) (a) "Financial institution holding company" means a person, other than an
83 individual that has control over ~~[any]~~ a financial institution or ~~[any]~~ a person that becomes a
84 financial institution holding company under this chapter, including an out-of-state or foreign
85 depository institution holding company.

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

88 (c) A person holding 10% or less of the voting securities of a financial institution is
89 rebuttably presumed not to have control of the institution.

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

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

96 (13) "Foreign depository institution holding company" means the holding company of a
97 foreign depository institution.

98 (14) "Home state" means:

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

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

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

104 (15) "Host state" means:

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

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

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

112 (17) "Industrial loan company" means the same as that term is defined in Section
113 7-8-21.

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

116 (19) "Institution" means:

- 117 (a) a corporation;
- 118 (b) a limited liability company;
- 119 (c) a partnership;
- 120 (d) a trust;
- 121 (e) an association;
- 122 (f) a joint venture;
- 123 (g) a pool;
- 124 (h) a syndicate;
- 125 (i) an unincorporated organization; or
- 126 (j) any form of business entity.

127 (20) "Institution subject to the jurisdiction of the department" means an institution or
128 other person described in Section [7-1-501](#).

129 (21) "Liquidation" means the act or process of winding up the affairs of an institution
130 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and
131 appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by
132 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding
133 Companies.

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

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

- 137 (i) a check casher;
- 138 (ii) a deferred deposit lender;
- 139 (iii) an issuer or seller of traveler's checks or money orders; and
- 140 (iv) a money transmitter.

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

- 142 (i) a bank;
- 143 (ii) a person registered with, and functionally regulated or examined by the Securities
- 144 Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial
- 145 agency that engages in financial activities that, if conducted in the United States, would require
- 146 the foreign financial agency to be registered with the Securities Exchange Commission or the
- 147 Commodity Futures Trading Commission; or
- 148 (iii) an individual who engages in an activity described in Subsection (23)(a) on an
- 149 infrequent basis and not for gain or profit.
- 150 (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.
- 151 (25) (a) "NOW account" means a savings account from which the owner may make
- 152 withdrawals by negotiable or transferable instruments for the purpose of making transfers to
- 153 third parties.
- 154 (b) A "NOW account" is not a demand deposit.
- 155 (c) ~~Neither the~~ The owner of a NOW account ~~[nor]~~ or any third party holder of an
- 156 instrument requesting withdrawal from the account ~~[has]~~ does not have a legal right to make
- 157 withdrawal on demand.
- 158 (26) "Out-of-state" means, in reference to a depository institution or depository
- 159 institution holding company, an institution or company whose home state is not Utah.
- 160 (27) "Person" means:
- 161 (a) an individual;
- 162 (b) a corporation;
- 163 (c) a limited liability company;
- 164 (d) a partnership;
- 165 (e) a trust;
- 166 (f) an association;
- 167 (g) a joint venture;
- 168 (h) a pool;
- 169 (i) a syndicate;

170 (j) a sole proprietorship;

171 (k) an unincorporated organization; or

172 (l) any form of business entity.

173 (28) "Receiver" means a person, agency, or instrumentality of this state or the United
174 States appointed to administer and manage an institution subject to the jurisdiction of the
175 department in receivership, as provided in Chapter 2, Possession of Depository Institution by
176 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding
177 Companies.

178 (29) "Receivership" means the administration and management of the affairs of an
179 institution subject to the jurisdiction of the department to conserve, preserve, and properly
180 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in
181 Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition
182 of Failing Depository Institutions or Holding Companies.

183 (30) "Savings account" means ~~any~~ a deposit or other account at a depository
184 institution that is not a transaction account.

185 (31) "Savings and loan association" means:

186 (a) a federal savings and loan association; and

187 (b) an out-of-state savings and loan association.

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

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

192 (a) a state;

193 (b) the District of Columbia; or

194 (c) the territories of the United States.

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

196 (35) "Technology service provider" means a person that provides a data processing
197 service or activity that supports the financial services or Internet related services of a depository

198 institution subject to the jurisdiction of the department, including supporting:

- 199 (a) lending;
- 200 (b) money transfers;
- 201 (c) fiduciary activities;
- 202 (d) trading activities;
- 203 (e) deposit taking;
- 204 (f) web services and electronic bill payments;
- 205 (g) mobile applications;
- 206 (h) system and software development and maintenance; and
- 207 (i) security monitoring.

208 (36) (a) "Transaction account" means a deposit, account, or other contractual
209 arrangement in which a depositor, account holder, or other customer is permitted, directly or
210 indirectly, to make withdrawals by:

- 211 (i) check or other negotiable or transferable instrument;
- 212 (ii) payment order of withdrawal;
- 213 (iii) telephone transfer;
- 214 (iv) other electronic means; or
- 215 (v) any other means or device for the purpose of making payments or transfers to third
216 persons.

217 (b) "Transaction account" includes:

- 218 (i) demand deposits;
- 219 (ii) NOW accounts;
- 220 (iii) savings deposits subject to automatic transfers; and
- 221 (iv) share draft accounts.

222 (37) "Trust company" means a person authorized to conduct a trust business, as
223 provided in Chapter 5, Trust Business.

224 (38) "Utah depository institution" means a depository institution whose home state is
225 Utah.

226 (39) "Utah depository institution holding company" means a depository institution
227 holding company whose home state is Utah.

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

229 **7-1-201. Creation of department -- Organization.**

230 (1) There is created the Department of Financial Institutions that is responsible for the
231 execution of the laws of this state relating to ~~[a]]~~ a financial [institutions and] institution or
232 other ~~[persons]~~ person subject to this title, and relating to the businesses ~~[they conduct]~~ that the
233 financial institution or other person conducts.

234 (2) The department organization includes:

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

237 (b) the Board of Financial Institutions;

238 (c) the chief examiner;

239 (d) the deputy commissioner;

240 (e) the supervisor of banks;

241 (f) the supervisor of industrial banks;

242 (g) the supervisor of credit unions;

243 (h) the supervisor of money services businesses; ~~[and]~~

244 (i) the supervisor of holding companies; and

245 ~~[(†)]~~ (j) other supervisors, examiners, and personnel as may be required to carry out the
246 duties, powers, and responsibilities of the department.

247 (3) A power or duty of the commissioner under this title may be exercised by the
248 deputy commissioner or a supervisor described in Subsection (2) if the commissioner delegates
249 in writing the authority to exercise the power or duty to the deputy commissioner or supervisor.

250 Section 3. Section 7-1-208.1 is amended to read:

251 **7-1-208.1. Supervisor of holding companies -- Qualifications -- Responsibilities.**

252 (1) The commissioner may designate an examiner as supervisor of ~~[trusts]~~ holding
253 companies who shall be a citizen of the United States and shall have sufficient training and

254 experience with regard to ~~[trusts]~~ holding companies to demonstrate ~~[his]~~ the examiner's
255 qualifications and fitness to perform the duties of ~~[his office]~~ the supervisor of holding
256 companies.

257 (2) The supervisor of ~~[trusts]~~ holding companies is responsible, subject to the direction
258 and control of the commissioner, for the general supervision and examination of all ~~[trusts]~~
259 holding companies subject to the jurisdiction of the department under this title. ~~[He]~~ The
260 supervisor of holding companies shall assist and advise the commissioner in the execution of
261 the laws of this state relating to ~~[trusts]~~ holding companies and shall perform other duties
262 prescribed in this title or assigned to ~~[him]~~ the supervisor of holding companies by the
263 commissioner.

264 Section 4. Section **7-1-209** is amended to read:

265 **7-1-209. Additional supervisors, examiners, and other personnel -- Compensation**
266 **-- Travel expenses.**

267 (1) In addition to the supervisors under Sections **7-1-205** through **7-1-208.1** and
268 **7-1-208.3**, the commissioner may appoint additional supervisors as necessary. The
269 commissioner may assign to any supervisor responsibility, subject to the direction and control
270 of the commissioner, for the general supervision and examination of any class of financial
271 institutions or other persons not specifically assigned to another supervisor.

272 (2) The commissioner may employ examiners required for the proper conduct of the
273 department. These examiners may not be interested, directly or indirectly, in any institution
274 under the jurisdiction and supervision of the department. They shall perform duties prescribed
275 by this title or assigned to them by the commissioner.

276 (3) The commissioner may delegate to the chief examiner or any supervisor the duty of
277 conducting hearings in carrying out the duties, powers, and functions of the department, or ~~[he]~~
278 the commissioner may employ, on a regular or part-time basis, similarly qualified persons to
279 act as hearing officers for those purposes.

280 (4) The commissioner may appoint or employ, on a permanent or consulting basis,
281 other persons qualified by education, training, and experience for the needs of the department

282 as the commissioner considers necessary to carry out the duties, powers, and responsibilities of
283 the department.

284 (5) The commissioner may employ clerical help to properly carry on the work of the
285 department.

286 (6) The salaries of the employees of the department shall be fixed in accordance with
287 salary and merit standards adopted by the Division of Finance and are payable in the same
288 manner as the salaries of other state employees. All actual and necessary traveling expenses of
289 the commissioner, supervisors, examiners, and other employees of the department incurred in
290 the discharge of their duties shall be fully itemized upon proper vouchers and certified by the
291 commissioner to the director of the Division of Finance.

292 Section 5. Section **7-1-703** is amended to read:

293 **7-1-703. Restrictions on acquisition of institutions and holding companies --**
294 **Enforcement.**

295 (1) Unless the commissioner gives prior written approval under Section **7-1-705**, [~~no~~] a
296 person may not:

297 (a) acquire, directly or indirectly, control of a depository institution or depository
298 institution holding company subject to the jurisdiction of the department;

299 (b) vote the stock of [~~any~~] a depository institution or depository institution holding
300 company subject to the jurisdiction of the department acquired in violation of Section **7-1-705**;

301 (c) acquire all or [~~any~~] a material portion of the assets of a depository institution or a
302 depository institution holding company subject to the jurisdiction of the department;

303 (d) assume all or [~~any~~] a material portion of the deposit liabilities of a depository
304 institution subject to the jurisdiction of the department;

305 (e) take any action that causes a depository institution to become a subsidiary of a
306 depository institution holding company subject to the jurisdiction of the department;

307 (f) take any action that causes a person other than an individual to become a depository
308 institution holding company subject to the jurisdiction of the department;

309 (g) acquire, directly or indirectly, the voting or nonvoting securities of a depository

310 institution or a depository institution holding company subject to the jurisdiction of the
311 department if the acquisition would result in the person obtaining more than 20% of the
312 authorized voting securities of the institution if the nonvoting securities were converted into
313 voting securities; or

314 (h) merge or consolidate with a depository institution or depository institution holding
315 company subject to the jurisdiction of the department.

316 (2) ~~[Any]~~ A person who willfully violates ~~[any provision of]~~ this section or ~~[any]~~ a rule
317 or order issued by the department under this section is subject to a civil penalty of not more
318 than \$1,000 per day during which the violation continues. The commissioner may assess the
319 civil penalty after giving notice and opportunity for hearing. The commissioner shall collect
320 the civil penalty by bringing an action in the district court of the county in which the office of
321 the commissioner is located. ~~[Any]~~ An applicant for approval of an acquisition is considered to
322 have consented to the jurisdiction and venue of the court by filing an application for approval.

323 (3) The commissioner may secure injunctive relief to prevent ~~[any]~~ a change in control
324 or impending violation of this section.

325 (4) The commissioner may lengthen or shorten any time period specified in Section
326 7-1-705 if the commissioner finds it necessary to protect the public interest.

327 (5) The commissioner may exempt ~~[any]~~ a class of financial institutions from this
328 section by rule if the commissioner finds the exception to be in the public interest.

329 (6) The prior approval of the commissioner under Section 7-1-705 is not required for
330 the acquisition by a person other than an individual of voting securities or assets of a depository
331 institution or a depository institution holding company that are acquired by foreclosure or
332 otherwise in the ordinary course of collecting a debt previously contracted in good faith if these
333 voting securities or assets are divested within two years of acquisition. The commissioner may,
334 upon application, extend the two-year period of divestiture for up to three additional one-year
335 periods if, in the commissioner's judgment, the extension would not be detrimental to the
336 public interest. The commissioner may adopt rules to implement the intent of this Subsection
337 (6).

338 (7) (a) An out-of-state depository institution without a branch in Utah, or an
339 out-of-state depository institution holding company without a depository institution in Utah,
340 may acquire:

341 (i) a Utah depository institution only if it has been in existence for at least five years; or

342 (ii) a Utah branch of a depository institution only if the branch has been in existence
343 for at least five years.

344 (b) For purposes of Subsection (7)(a), a depository institution chartered solely for the
345 purpose of acquiring another depository institution is considered to have been in existence for
346 the same period as the depository institution to be acquired, so long as it does not open for
347 business at any time before the acquisition.

348 (c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a
349 depository institution that is subject to, or is in danger of becoming subject to, supervisory
350 action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19,
351 Acquisition of Failing Depository Institutions or Holding Companies, or, if applicable, the
352 equivalent provisions of federal law or the law of the institution's home state.

353 (d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger
354 transaction between, affiliate depository institutions.