

Title 7. Financial Institutions Act

Chapter 1 General Provisions

Part 1 Citation, Purposes, Definitions, and Application

7-1-101 Title.

This title is known as the "Financial Institutions Act."

Amended by Chapter 200, 1994 General Session

7-1-102 Legislative findings, purpose, and intent.

- (1) The Legislature finds it is in the interest of the citizens of this state, and is the purpose of this title, to:
- (a) supervise, regulate, and examine persons, firms, corporations, associations, and other business entities furnishing depository, lending, and associated financial services in this state;
 - (b) protect the interests of shareholders, members, depositors, and other customers of financial institutions operating in this state;
 - (c) preserve the competitive equality of state chartered institutions as compared to federally chartered institutions, and of Utah depository institutions as compared to out-of-state and foreign depository institutions;
 - (d) promote the availability, efficiency, and profitability of financial services in the communities of this state;
 - (e) preserve the advantages of the dual banking system;
 - (f) cooperate with federal regulators and regulators from other states in regulating financial institutions, in improving the quality of regulation, and in promoting the interests of this state in interstate matters; and
 - (g) provide to the Commissioner of Financial Institutions sufficient powers and responsibilities to carry out these purposes.
- (2) It is the intent of the Legislature that the provisions of this title be interpreted to promote these purposes.

Repealed and Re-enacted by Chapter 49, 1995 General Session

7-1-103 Definitions.

As used in this title:

- (1)
- (a) "Bank" means a person authorized under the laws of this state, another state, or the United States to accept deposits from the public.
 - (b) "Bank" does not include:
 - (i) a federal savings and loan association or federal savings bank;
 - (ii) an industrial bank subject to Chapter 8, Industrial Banks;
 - (iii) a federally chartered credit union; or
 - (iv) a credit union subject to Chapter 9, Utah Credit Union Act.

- (2) "Banking business" means the offering of deposit accounts to the public and the conduct of such other business activities as may be authorized by this title.
- (3)
 - (a) "Branch" means a place of business of a financial institution, other than its main office, at which deposits are received and paid.
 - (b) "Branch" does not include:
 - (i) an automated teller machine, as defined in Section 7-16a-102;
 - (ii) a point-of-sale terminal, as defined in Section 7-16a-102; or
 - (iii) a loan production office under Section 7-1-715.
- (4) "Commissioner" means the Commissioner of Financial Institutions.
- (5) "Control" means the power, directly or indirectly, or through or in concert with one or more persons, to:
 - (a) direct or exercise a controlling influence over:
 - (i) the management or policies of a financial institution; or
 - (ii) the election of a majority of the directors or trustees of an institution;
 - (b) vote 20% or more of any class of voting securities of a financial institution by an individual; or
 - (c) vote more than 10% of any class of voting securities of a financial institution by a person other than an individual.
- (6) "Credit union" means a cooperative, nonprofit association incorporated under:
 - (a) Chapter 9, Utah Credit Union Act; or
 - (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- (7) "Department" means the Department of Financial Institutions.
- (8) "Depository institution" means a bank, savings and loan association, savings bank, industrial bank, credit union, or other institution that:
 - (a) holds or receives deposits, savings, or share accounts;
 - (b) issues certificates of deposit; or
 - (c) provides to its customers other depository accounts that are subject to withdrawal by checks, drafts, or other instruments or by electronic means to effect third party payments.
- (9)
 - (a) "Depository institution holding company" means:
 - (i) a person other than an individual that:
 - (A) has control over a depository institution; or
 - (B) becomes a holding company of a depository institution under Section 7-1-703; or
 - (ii) a person other than an individual that the commissioner finds, after considering the specific circumstances, is exercising or is capable of exercising a controlling influence over a depository institution by means other than those specifically described in this section.
 - (b) Except as provided in Section 7-1-703, a person is not a depository institution holding company solely because it owns or controls shares acquired in securing or collecting a debt previously contracted in good faith.
- (10) "Financial institution" means an institution subject to the jurisdiction of the department because of this title.
- (11)
 - (a) "Financial institution holding company" means a person, other than an individual that has control over a financial institution or a person that becomes a financial institution holding company under this chapter, including an out-of-state or foreign depository institution holding company.
 - (b) Ownership of a service corporation or service organization by a depository institution does not make that institution a financial institution holding company.

- (c) A person holding 10% or less of the voting securities of a financial institution is rebuttably presumed not to have control of the institution.
- (d) A trust company is not a holding company solely because it owns or holds 20% or more of the voting securities of a financial institution in a fiduciary capacity, unless the trust company exercises a controlling influence over the management or policies of the financial institution.
- (12) "Foreign depository institution" means a depository institution chartered or authorized to transact business by a foreign government.
- (13) "Foreign depository institution holding company" means the holding company of a foreign depository institution.
- (14) "Home state" means:
 - (a) for a state chartered depository institution, the state that charters the institution;
 - (b) for a federally chartered depository institution, the state where the institution's main office is located; and
 - (c) for a depository institution holding company, the state in which the total deposits of all depository institution subsidiaries are the largest.
- (15) "Host state" means:
 - (a) for a depository institution, a state, other than the institution's home state, where the institution maintains or seeks to establish a branch; and
 - (b) for a depository institution holding company, a state, other than the depository institution holding company's home state, where the depository institution holding company controls or seeks to control a depository institution subsidiary.
- (16) "Industrial bank" means a corporation or limited liability company conducting the business of an industrial bank under Chapter 8, Industrial Banks.
- (17) "Industrial loan company" means the same as that term is defined in Section 7-8-21.
- (18) "Insolvent" means the status of a financial institution that is unable to meet its obligations as they mature.
- (19) "Institution" means:
 - (a) a corporation;
 - (b) a limited liability company;
 - (c) a partnership;
 - (d) a trust;
 - (e) an association;
 - (f) a joint venture;
 - (g) a pool;
 - (h) a syndicate;
 - (i) an unincorporated organization; or
 - (j) any form of business entity.
- (20) "Institution subject to the jurisdiction of the department" means an institution or other person described in Section 7-1-501.
- (21) "Liquidation" means the act or process of winding up the affairs of an institution subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (22) "Liquidator" means a person, agency, or instrumentality of this state or the United States appointed to conduct a liquidation.
- (23)
 - (a) "Money services business" includes:
 - (i) a check casher;

- (ii) a deferred deposit lender;
 - (iii) an issuer or seller of traveler's checks or money orders; and
 - (iv) a money transmitter.
- (b) "Money services business" does not include:
- (i) a bank;
 - (ii) a person registered with, and functionally regulated or examined by the Securities Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities Exchange Commission or the Commodity Futures Trading Commission; or
 - (iii) an individual who engages in an activity described in Subsection (23)(a) on an infrequent basis and not for gain or profit.
- (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.
- (25)
- (a) "NOW account" means a savings account from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.
 - (b) A "NOW account" is not a demand deposit.
 - (c) The owner of a NOW account or any third party holder of an instrument requesting withdrawal from the account does not have a legal right to make withdrawal on demand.
- (26) "Out-of-state" means, in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.
- (27) "Person" means:
- (a) an individual;
 - (b) a corporation;
 - (c) a limited liability company;
 - (d) a partnership;
 - (e) a trust;
 - (f) an association;
 - (g) a joint venture;
 - (h) a pool;
 - (i) a syndicate;
 - (j) a sole proprietorship;
 - (k) an unincorporated organization; or
 - (l) any form of business entity.
- (28) "Receiver" means a person, agency, or instrumentality of this state or the United States appointed to administer and manage an institution subject to the jurisdiction of the department in receivership, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (29) "Receivership" means the administration and management of the affairs of an institution subject to the jurisdiction of the department to conserve, preserve, and properly dispose of the assets, liabilities, and revenues of an institution in possession, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (30) "Savings account" means a deposit or other account at a depository institution that is not a transaction account.
- (31) "Savings and loan association" means:
- (a) a federal savings and loan association; and

- (b) an out-of-state savings and loan association.
- (32) "Service corporation" or "service organization" means a corporation or other business entity owned or controlled by one or more financial institutions that is engaged or proposes to engage in business activities related to the business of financial institutions.
- (33) "State" means, unless the context demands otherwise:
 - (a) a state;
 - (b) the District of Columbia; or
 - (c) the territories of the United States.
- (34) "Subsidiary" means a business entity under the control of an institution.
- (35) "Technology service provider" means a person that provides a data processing service or activity that supports the financial services or Internet related services of a depository institution subject to the jurisdiction of the department, including supporting:
 - (a) lending;
 - (b) money transfers;
 - (c) fiduciary activities;
 - (d) trading activities;
 - (e) deposit taking;
 - (f) web services and electronic bill payments;
 - (g) mobile applications;
 - (h) system and software development and maintenance; and
 - (i) security monitoring.
- (36)
 - (a) "Transaction account" means a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by:
 - (i) check or other negotiable or transferable instrument;
 - (ii) payment order of withdrawal;
 - (iii) telephone transfer;
 - (iv) other electronic means; or
 - (v) any other means or device for the purpose of making payments or transfers to third persons.
 - (b) "Transaction account" includes:
 - (i) demand deposits;
 - (ii) NOW accounts;
 - (iii) savings deposits subject to automatic transfers; and
 - (iv) share draft accounts.
- (37) "Trust company" means a person authorized to conduct a trust business, as provided in Chapter 5, Trust Business.
- (38) "Utah depository institution" means a depository institution whose home state is Utah.
- (39) "Utah depository institution holding company" means a depository institution holding company whose home state is Utah.

Amended by Chapter 169, 2017 General Session

7-1-104 Exemptions from application of title.

- (1) This title does not apply to:
 - (a) investment companies registered under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq.;
 - (b) securities brokers and dealers registered pursuant to:

- (i) Title 61, Chapter 1, Utah Uniform Securities Act; or
 - (ii) the federal Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;
 - (c) depository or other institutions performing transaction account services, including third party transactions, in connection with:
 - (i) the purchase and redemption of investment company shares; or
 - (ii) access to a margin or cash securities account maintained by a person identified in Subsection (1)(b); or
 - (d) insurance companies selling interests in an investment company or "separate account" and subject to regulation by the Utah Insurance Department.
- (2)
- (a) An institution, organization, or person is not exempt from this title if, within this state, it holds itself out to the public as receiving and holding deposits from residents of this state, whether evidenced by a certificate, promissory note, or otherwise.
 - (b) An investment company is not exempt from this title unless the investment company is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and is advised by an investment adviser:
 - (i) which is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940, 15 U.S.C. Sec. 80b-1 et seq.; and
 - (ii) which advises investment companies and other accounts with a combined value of at least \$50,000,000.

Amended by Chapter 356, 2009 General Session

7-1-105 Procedures -- Adjudicative proceedings.

The commissioner and the department shall, except to the extent exempted, comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

Part 2 Department of Financial Institutions

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

- (1) There is created the Department of Financial Institutions that is responsible for the execution of the laws of this state relating to a financial institution or other person subject to this title, and relating to the businesses that the financial institution or other person conducts.
- (2) The department organization includes:
 - (a) the commissioner of financial institutions, who shall be the chief executive officer of the department;
 - (b) the Board of Financial Institutions;
 - (c) the chief examiner;
 - (d) the deputy commissioner;
 - (e) the supervisor of banks;
 - (f) the supervisor of industrial banks;
 - (g) the supervisor of credit unions;

- (h) the supervisor of money services businesses;
 - (i) the supervisor of holding companies; and
 - (j) other supervisors, examiners, and personnel as may be required to carry out the duties, powers, and responsibilities of the department.
- (3) A power or duty of the commissioner under this title may be exercised by the deputy commissioner or a supervisor described in Subsection (2) if the commissioner delegates in writing the authority to exercise the power or duty to the deputy commissioner or supervisor.

Amended by Chapter 169, 2017 General Session

7-1-202 Commissioner of financial institutions as executive officer -- Appointment -- Term -- Salary -- Qualifications.

The chief executive officer of the Department of Financial Institutions shall be the commissioner of financial institutions who shall be appointed by the governor with the advice and consent of the Senate. The commissioner shall hold office for a term of four years following appointment and confirmation and until a successor is appointed and qualified, but shall be subject to removal at the pleasure of the governor. The governor shall establish the commissioner's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation. The commissioner of financial institutions shall be a citizen of the United States and shall have sufficient experience with depository institutions or as an employee of a state or federal agency having supervision over financial institutions to demonstrate the commissioner's qualifications and fitness to perform the duties of the commissioner's office.

Amended by Chapter 352, 2020 General Session

7-1-203 Board of Financial Institutions.

- (1) There is created a Board of Financial Institutions consisting of the commissioner and the following five members, who shall be qualified by training and experience in their respective fields and shall be appointed by the governor with the advice and consent of the Senate:
- (a) one representative from the commercial banking business;
 - (b) one representative from the consumer lending, money services business, or escrow agency business;
 - (c) one representative from the industrial bank business;
 - (d) one representative from the credit union business; and
 - (e) one representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state.
- (2) The commissioner shall act as chair.
- (3)
- (a) A member of the board shall be a resident of this state.
 - (b) No more than three members of the board may be from the same political party.
 - (c) No more than two members of the board may be connected with the same financial institution or its holding company.
 - (d) A member may not participate in any matter involving an institution with which the member has a conflict of interest.
- (4)
- (a) Except as required by Subsection (4)(b), the terms of office shall be four years each expiring on July 1.

- (b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) A member serves until the member's successor is appointed and qualified.
 - (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.
- (5)
- (a) The board shall meet at least quarterly on a date the board sets.
 - (b) The commissioner or any two members of the board may call additional meetings.
 - (c) Four members constitute a quorum for the transaction of business.
 - (d) Actions of the board require a vote of a majority of those present when a quorum is present.
 - (e) A meeting of the board and records of the board's proceedings are subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of confidential information pertaining to a particular financial institution.
- (6)
- (a) A member of the board shall, by sworn or written statement filed with the commissioner, disclose any position of employment or ownership interest that the member has with respect to any institution subject to the jurisdiction of the department.
 - (b) The member shall:
 - (i) file the statement required by this Subsection (6) when first appointed to the board; and
 - (ii) subsequently file amendments to the statement if there is any material change in the matters covered by the statement.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) The board shall advise the commissioner with respect to:
- (a) the exercise of the commissioner's duties, powers, and responsibilities under this title; and
 - (b) the organization and performance of the department and its employees.
- (9) The board shall recommend annually to the governor and the Legislature a budget for the requirements of the department in carrying out its duties, functions, and responsibilities under this title.

Amended by Chapter 352, 2020 General Session

7-1-204 Chief examiner -- Powers and duties.

- (1) The commissioner shall designate an examiner as chief examiner, who shall be sufficiently qualified by training and experience in financial institutions or as an employee of a state or federal agency having supervision of financial institutions to perform the duties of the office.
- (2) The chief examiner shall serve at the pleasure of the commissioner. If the office of commissioner is vacant, or in the absence, recusal, or disability of the commissioner, the chief examiner shall exercise all of the powers of the commissioner, except those powers the commissioner otherwise delegates or reserves during a period of absence or recusal. The chief examiner shall assist, advise, and perform administrative duties as directed by the commissioner and may also act as a supervisor.

Amended by Chapter 200, 1994 General Session

7-1-205 Supervisor of banks -- Responsibilities.

- (1) The commissioner shall designate an examiner as supervisor of banks, who shall be sufficiently qualified by training and experience in the banking business or as an employee of a state or federal bank supervisory agency to perform the duties of the office.
- (2) The supervisor of banks is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all banks and bank-related institutions subject to the jurisdiction of the department. The supervisor shall assist and advise the commissioner in the execution of the laws of this state relating to these institutions and shall perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 200, 1994 General Session

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

- (1) The commissioner shall designate an examiner as supervisor of industrial banks who shall be sufficiently qualified by training and experience in the business of industrial banks or other financial institutions or as an employee of a state or federal agency supervising financial institutions to perform the duties of the office.
- (2)
 - (a) The supervisor of industrial banks is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all industrial banks subject to the jurisdiction of the department and other institutions as assigned.
 - (b) The supervisor shall:
 - (i) assist and advise the commissioner in the execution of the laws of this state relating to these institutions; and
 - (ii) perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 92, 2004 General Session

7-1-208 Supervisor of credit unions -- Responsibilities.

- (1) The commissioner shall designate an examiner as supervisor of credit unions who shall be sufficiently qualified by training and experience in the business of credit unions or as an employee of a state or federal agency supervising credit unions to perform the duties of the office.
- (2) The supervisor of credit unions is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all credit unions subject to the jurisdiction of the department and other institutions assigned by the commissioner. The supervisor shall assist and advise the commissioner in the execution of the laws of this state relating to these institutions, and shall perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 200, 1994 General Session

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

- (1) The commissioner may designate an examiner as supervisor of holding companies who shall be a citizen of the United States and shall have sufficient training and experience with regard to holding companies to demonstrate the examiner's qualifications and fitness to perform the duties of the supervisor of holding companies.

- (2) The supervisor of holding companies is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all holding companies subject to the jurisdiction of the department under this title. The supervisor of holding companies shall assist and advise the commissioner in the execution of the laws of this state relating to holding companies and shall perform other duties prescribed in this title or assigned to the supervisor of holding companies by the commissioner.

Amended by Chapter 169, 2017 General Session

7-1-208.2 Deputy commissioner.

The commissioner may appoint a deputy commissioner who shall be a citizen of the United States and a member of the Utah State Bar, to serve at the pleasure of the commissioner. The deputy commissioner shall serve as staff attorney for the department and perform all other duties assigned to him by the commissioner.

Enacted by Chapter 267, 1989 General Session

7-1-208.3 Supervisor of money services businesses.

- (1) The commissioner shall designate an examiner as supervisor of money services businesses who shall be sufficiently qualified by training and experience in the business of money services businesses or other financial institutions or as an employee of a state or federal agency supervising financial institutions to perform the duties of the office.
- (2)
 - (a) The supervisor of money services businesses is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of money services businesses subject to the jurisdiction of the department and other institutions as assigned.
 - (b) The supervisor shall:
 - (i) assist and advise the commissioner in the execution of the laws of this state relating to money services businesses; and
 - (ii) perform other duties prescribed in this title or assigned by the commissioner.

Enacted by Chapter 73, 2013 General Session

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

- (1) In addition to the supervisors under Sections 7-1-205 through 7-1-208.1 and 7-1-208.3, the commissioner may appoint additional supervisors as necessary. The commissioner may assign to any supervisor responsibility, subject to the direction and control of the commissioner, for the general supervision and examination of any class of financial institutions or other persons not specifically assigned to another supervisor.
- (2) The commissioner may employ examiners required for the proper conduct of the department. These examiners may not be interested, directly or indirectly, in any institution under the jurisdiction and supervision of the department. They shall perform duties prescribed by this title or assigned to them by the commissioner.
- (3) The commissioner may delegate to the chief examiner or any supervisor the duty of conducting hearings in carrying out the duties, powers, and functions of the department, or the commissioner may employ, on a regular or part-time basis, similarly qualified persons to act as hearing officers for those purposes.

- (4) The commissioner may appoint or employ, on a permanent or consulting basis, other persons qualified by education, training, and experience for the needs of the department as the commissioner considers necessary to carry out the duties, powers, and responsibilities of the department.
- (5) The commissioner may employ clerical help to properly carry on the work of the department.
- (6) The salaries of the employees of the department shall be fixed in accordance with salary and merit standards adopted by the Division of Finance and are payable in the same manner as the salaries of other state employees. All actual and necessary traveling expenses of the commissioner, supervisors, examiners, and other employees of the department incurred in the discharge of their duties shall be fully itemized upon proper vouchers and certified by the commissioner to the director of the Division of Finance.

Amended by Chapter 169, 2017 General Session

7-1-210 Records of department required.

The commissioner shall keep as records of the department proper books showing all acts and matters and things done by the department.

Enacted by Chapter 16, 1981 General Session

7-1-211 Reports of commissioner to governor and Legislature.

The commissioner shall submit on or before October 1 of each year a report to the governor and to the Legislature containing information from the last report of condition furnished by each institution under the supervision of the department and any other proceeding had or done by the department showing generally the condition of the businesses under the supervision of the department and such other matters in connection with the businesses as may be of interest to the public; and a detailed statement, verified by oath, of all fees and other money received by the department during the same period.

Enacted by Chapter 16, 1981 General Session

7-1-212 Background checks for employees.

- (1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
- (2) Beginning July 1, 2018, the department shall require current employees in, and all applicants for, the following positions to submit to a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring as a condition of employment:
 - (a) agency information security managers;
 - (b) financial institutions examiners;
 - (c) financial institutions managers; and
 - (d) financial institutions specialists.
- (3) Each individual in a position listed in Subsection (2) shall provide a completed fingerprint card to the department upon request.
- (4) The department shall require that an individual required to submit to a background check under Subsection (3) provide a signed waiver on a form provided by the department that meets the requirements of Subsection 53-10-108(4).
- (5) For a noncriminal justice background search and registration in accordance with Subsection 53-10-108(13), the department shall submit to the bureau:

- (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and
 - (b) a request for all information received as a result of the local, regional, and nationwide background check.
- (6) The department is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.
- (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
- (a) determine how the department will assess the employment status of an individual upon receipt of background information; and
 - (b) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b).

Enacted by Chapter 427, 2018 General Session

7-1-213 Compliance with training and certification requirements.

The department shall ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

- (1) under this title;
- (2) by the department; or
- (3) by an agency or division within the department.

Enacted by Chapter 200, 2018 General Session

Part 3
Powers and Duties of Commissioner of Financial Institutions

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

Without limiting the other powers, duties, and responsibilities specified in this title, the commissioner has the functions, powers, duties, and responsibilities with respect to an institution, person, or business subject to the jurisdiction of the department contained in this title, including the functions, powers, duties, and responsibilities described in Subsections (1) through (15).

- (1) The commissioner may govern the administration and operation of the department.
- (2) The commissioner may supervise the conduct, operation, management, examination, and statements and reports of examinations of financial institutions and other persons subject to the jurisdiction of the department.
- (3)
 - (a) The commissioner may authorize a state chartered depository institution to engage in any activity it could engage in, and to grant to that institution all additional rights, powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws of the United States.
 - (b) The commissioner may authorize a depository institution chartered by this state to engage in any activity that a Utah branch of an out-of-state depository institution of the same class can

engage in, and to grant to the Utah institution all additional rights, powers, privileges, benefits, or immunities it needs to engage in the activity.

- (c) In granting authority under this Subsection (3), the commissioner shall consider:
 - (i) the need for competitive equality between institutions chartered by this state and institutions operating in this state that are chartered by another state or by the federal government; and
 - (ii) the adverse effect on shareholders, members, depositors, and other customers of financial institutions chartered by this state if equal power and protection of those institutions, compared with federally chartered or out-of-state institutions of the same class, are not promptly available.
- (4) The commissioner may safeguard the interest of shareholders, members, depositors, and other customers of institutions and other persons subject to the jurisdiction of the department.
- (5)
 - (a) The commissioner may establish criteria consistent with this title to be applied in granting applications for approval of:
 - (i) a new institution;
 - (ii) a new branch;
 - (iii) the relocation of an office or branch;
 - (iv) a merger;
 - (v) a consolidation;
 - (vi) a change in control of an institution or other person subject to the jurisdiction of the department; and
 - (vii) other applications specified in this title.
 - (b) The criteria established under Subsection (5)(a) may not be applied to make it more difficult for a state chartered institution to obtain approval of an application than for a federally chartered institution in the same class to obtain approval from the appropriate federal regulatory agency or administrator.
- (6)
 - (a) The commissioner may protect the privacy of the records of any institution subject to the jurisdiction of the department pertaining to a particular depositor or other customer of the institution. Rules adopted under this Subsection (6) shall be consistent with federal laws and regulations applicable to the institution.
 - (b) An institution that consents to produce records or that is required to produce records in compliance with a subpoena or other order of a court of competent jurisdiction or in compliance with an order obtained pursuant to Sections 7-1-1001 through 7-1-1007 shall be reimbursed for the cost of retrieval and reproduction of the records by the party seeking the information. The commissioner may by rule establish the rates and conditions under which reimbursement is made.
- (7)
 - (a) The commissioner may classify the records kept by institutions subject to the jurisdiction of the department and to prescribe the period for which each class of records is retained.
 - (b) Rules adopted under this Subsection (7) for any class of financial institution shall be consistent with federal laws and regulations applicable to the class.
 - (c) Rules made under this Subsection (7) shall provide that:
 - (i) An institution may dispose of any record after retaining it for the period prescribed by the commissioner for retention of records of its class. If an institution disposes of a record after the prescribed period, the institution has no duty to produce it in any action or proceeding and is not liable to any person by reason of that disposition.

- (ii) An institution may keep records in its custody in the form of microfilm or equivalent reproduction. A reproduction has the same force and effect as the original and shall be admissible into evidence as if it were the original.
- (d) In adopting rules under this Subsection (7), the commissioner shall take into consideration:
 - (i) actions at law and administrative proceedings in which the production of the records might be necessary or desirable;
 - (ii) state and federal statutes of limitation applicable to the actions or proceedings;
 - (iii) the availability from other sources of information contained in these records; and
 - (iv) other matters the commissioner considers pertinent in formulating rules that require institutions to retain their records for as short a period as commensurate with the interest in having the records available of:
 - (A) customers, members, depositors, and shareholders of the institutions; and
 - (B) the people of this state.
- (8)
 - (a) The commissioner may establish reasonable classes of depository and other financial institutions including separate classes for:
 - (i) banks and related institutions;
 - (ii) credit unions; and
 - (iii) industrial banks.
 - (b) If the restrictions or requirements the commissioner imposes are not more stringent than those applicable under federal law or regulation to federally chartered institutions of the same class, the commissioner may establish the following for each class in a manner consistent with this title:
 - (i) eligible classes and types of investments for the deposits and other funds of those financial institutions;
 - (ii) minimum standards, in amounts sufficient to protect depositors and other creditors, for the amount and types of capital required to engage in the business conducted by each class or to obtain a license or to establish a branch or additional office of an institution of each class;
 - (iii) eligible obligations, reserves, and other accounts to be included in the computation of capital;
 - (iv) minimum liquidity requirements for financial institutions within each class in amounts sufficient to meet the demands of depositors and other creditors for liquid funds;
 - (v) limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities;
 - (vi) limitations on the amount and nature of loans and extensions of credit to a person or related persons by each class of financial institution in relation to the amount of its capital; and
 - (vii) limitations on the amount and nature of loans and extensions of credit by a financial institution or other person within each class to an executive officer, director, or principal shareholder of:
 - (A) the institution or other person;
 - (B) a company of which the institution or other person is a subsidiary;
 - (C) a subsidiary of the institution or other person;
 - (D) an affiliate of the institution; and
 - (E) a company controlled by an executive officer, director, or principal shareholder of the institution.
- (9) The commissioner may define unfair trade practices of financial institutions and other persons subject to the jurisdiction of the department and to prohibit or restrict these practices.

- (10) The commissioner may establish reasonable standards to promote the fair and truthful advertising of:
 - (a) services offered by a financial institution;
 - (b) the charges for the services advertised under Subsection (10)(a);
 - (c) the interest or other compensation to be paid on deposits or any debt instrument offered for sale by the institution;
 - (d) the nature and extent of any:
 - (i) insurance on deposits;
 - (ii) savings accounts;
 - (iii) share accounts;
 - (iv) certificates of deposit;
 - (v) time deposit accounts;
 - (vi) NOW accounts;
 - (vii) share draft accounts;
 - (viii) transaction accounts; or
 - (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by a financial institution or other person subject to the jurisdiction of the department; and
 - (e) the safety or financial soundness of a financial institution or other person subject to the jurisdiction of the department.
- (11) The commissioner may define what constitutes an impairment of capital for each class of financial institution or other person subject to the jurisdiction of the department.
- (12) The commissioner may designate days on which depository institutions are closed in accordance with Section 7-1-808.
- (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale of a security to the extent authorized by Section 7-1-503.
- (14) The commissioner may require the officers of an institution or other person subject to the commissioner's jurisdiction to open and keep a standard set of books, computer records, or both for the purpose of keeping accurate and convenient records of the transactions and accounts of the institution in a manner to enable the commissioner, supervisors, and department examiners to readily ascertain the institution's true condition. These requirements shall be consistent with generally accepted accounting principles for financial institutions.
- (15) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may issue rules consistent with the purposes and provisions of this title, and may revise, amend, or repeal the rules adopted.

Amended by Chapter 73, 2013 General Session

7-1-302 Review of supervisor's action by commissioner.

The commissioner shall review, upon written request of the institution or other person affected, any act or order of a supervisor and may suspend, modify, or revoke any such act or order as he may find to be arbitrary, capricious, contrary to law or the rules and regulations of the department, or not in the best interest of the public or of the state.

Enacted by Chapter 16, 1981 General Session

7-1-303 Joint operations and information exchange by institutions.

The commissioner may authorize institutions subject to the jurisdiction of the department to engage in such joint and cooperative actions as the commissioner finds will be in the public interest, including:

- (1) mutual exchange of financial information as to depositors, borrowers, and other customers;
- (2) joint use of facilities;
- (3) joint operation of clearing houses and other facilities for payment of checks, drafts, or other instruments drawn on or issued by various classes of depository institutions;
- (4) joint participation in lending programs to promote the public welfare;
- (5) joint risk management services; and
- (6) joint ownership, operation, or furnishing of electronic funds transfer services.

Amended by Chapter 378, 2010 General Session

7-1-304 Civil actions against unauthorized operations.

The commissioner may bring any appropriate civil action to prevent or restrain any person from engaging in this state in any business subject to the jurisdiction of the department without first having obtained the authority to do so as provided in this title or from violating any other provisions of this title or any rule, regulation, or order of the commissioner.

Enacted by Chapter 16, 1981 General Session

7-1-305 Final decisions on applications for new institutions, branches, relocation, merger, consolidation, acquisition and changes in control of financial institutions.

The commissioner shall make final decisions consistent with the purposes and provisions of this title on behalf of the department upon all applications to the department for approval of new institutions, branches, relocation, mergers or consolidation, acquisitions and changes in control of institutions subject to the jurisdiction of the department.

Enacted by Chapter 16, 1981 General Session

7-1-307 Cease and desist orders -- Procedure for issuance.

- (1) If the commissioner has determined that any institution or other person under the jurisdiction of the department, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or other person, is engaging or has engaged or that the commissioner has reasonable cause to believe is about to engage in an unsafe or unsound practice in conducting the business of such institution or other person, or is violating or has violated or the commissioner has reasonable cause to believe is about to violate any applicable provision of this title, or any rule, regulation, order, or any condition imposed in writing by the commissioner in the granting of any application or other request by the institution or other person, or any written agreement entered into with the commissioner, the commissioner may, after notice and opportunity for hearing, issue a cease and desist order against such institution or other person.
- (2) If the commissioner has determined that any institution or other person under the jurisdiction of the department or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or other person is engaging in any unsafe or unsound practice or is violating any relevant provision of this title, or any rule, regulation, order, or any condition imposed in writing by the commissioner which the commissioner determines threatens the safety and soundness of the institution or other person, the commissioner may

issue a temporary cease and desist order. A temporary cease and desist order is effective immediately upon issuance for 30 days and may be extended by the commissioner in writing for two consecutive 15-day periods. A hearing on the temporary cease and desist order shall be held by the commissioner within 10 days of its issuance, at which time the temporary cease and desist order may be set aside, modified, terminated, or made final.

Enacted by Chapter 8, 1983 General Session

7-1-308 Suspension or removal of director or officer -- Grounds -- Procedure for issuance of order.

- (1)
 - (a) If the commissioner has determined that any officer or director of an institution or other person under the jurisdiction of the department has:
 - (i) violated any law, rule, regulation, or a cease and desist order which has become final;
 - (ii) engaged or participated in any unsafe or unsound practice in the conduct of the affairs of the institution or other person;
 - (iii) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as an officer or director;
 - (iv) been charged in any information, indictment, or complaint authorized by a county attorney, a district attorney, or the attorney general of the state relative to a violation of this title; or
 - (v) been charged with the commission of or participation in a crime involving dishonesty or breach of trust; and
 - (b) if the commissioner determines that:
 - (i) the institution or other person under the jurisdiction of the department has suffered or will suffer substantial financial loss or other damage due to such actions and that such action may impair the safety and soundness of the institution or other person or prejudice in any manner the interests of the depositors, members, creditors, or shareholders; or
 - (ii) the director or officer has received financial gain by reason of any breach of fiduciary duty; the commissioner may, after notice and opportunity for hearing, serve upon such director or officer a written notice of suspension or removal of the individual from office or prohibition from further participation in the conduct of the affairs of the institution or other person.
- (2) If the commissioner deems it necessary for the protection of an institution or other person under the jurisdiction of the department or the interests of its depositors, members, creditors, or shareholders, he may, by written notice served upon the officer or director, suspend that officer or director from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution or other person. The suspension or prohibition is effective upon service of the notice and, unless stayed by a court, shall remain in effect until the commissioner dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the officer or director, until the effective date of that order.

Amended by Chapter 38, 1993 General Session

7-1-309 Hearings by commissioner -- Discretion of commissioner -- Procedure -- Judicial review.

The commissioner may conduct or cause to be conducted hearings relating to matters within his supervisory jurisdiction and shall establish rules for discovery and other procedures applicable to the hearings consistent with the provisions of the Utah Rules of Civil Procedure. The decision whether or not to hold a formal hearing on any matter coming before the commissioner under

this title shall be solely within the discretion of the commissioner. His failure or refusal to hold a formal hearing is not a ground for reversal of any decision or order of the commissioner unless the reviewing court finds that such failure or refusal has deprived an interested party of due process of law, or that a formal hearing is required by the provisions of this title.

Amended by Chapter 378, 2010 General Session

7-1-310 Subpoena power of commissioner.

The commissioner may issue subpoenas to compel the attendance of witnesses and the production of books, records, and other papers and documents and may examine or cause to be examined under oath any officer, director, or employee of any institution subject to the jurisdiction of the department or any other person whose testimony he finds relevant to any matter before him or whose testimony is necessary or appropriate in carrying out his duties and responsibilities.

Enacted by Chapter 16, 1981 General Session

7-1-311 Moratoriums on applications for new depository institutions or branches.

The commissioner may establish, upon finding that applicable financial and economic conditions require such action, a moratorium on accepting or acting upon applications to conduct a business of depository institutions subject to the jurisdiction of the department or to establish new branches or offices of institutions subject to the jurisdiction of the department. The moratorium may apply to the entire state or to such community or communities or other market area or areas as the commissioner finds appropriate. No such period shall extend for a period longer than one year, unless the commissioner finds that the public interest requires renewal of the period for an additional period not to exceed one year.

Enacted by Chapter 16, 1981 General Session

7-1-312 Reports required of large stockholders of financial institutions as to loans secured by stock.

The commissioner may require any person owning or acquiring 25% or more of the outstanding capital stock of any depository institution subject to his jurisdiction, or 25% or more of the stock of any corporation having control of the institution, to report to him any borrowing by that person which is secured by that stock and to report to him the terms of the borrowing. This section applies only if the purpose for the borrowing was to acquire control of the institution or any other depository institution.

Enacted by Chapter 16, 1981 General Session

7-1-313 Requiring remedial action by institution in or about to be in unsound condition -- Assistance by insurers.

- (1) The commissioner may require any financial institution subject to the jurisdiction of the department that he finds to be or about to be in an unsafe or unsound condition to take corrective or remedial action as he considers appropriate to protect the interests of depositors, members, other creditors, and shareholders of the institution, and the general public.
- (2) An insurer of the accounts of a financial institution may make loans to, purchase the assets of, establish accounts in, or provide other assistance to a financial institution in order to correct or remedy an unsafe or unsound condition or to protect the interests of depositors, members,

other creditors, and shareholders of the institution. This assistance is subject to approval by the commissioner.

Amended by Chapter 267, 1989 General Session

7-1-314 Examination of institutions by commissioner or supervisor.

- (1) The commissioner or the responsible supervisor shall visit and examine or cause to be visited and examined every depository institution and such other institutions subject to the jurisdiction of the department as the commissioner considers necessary or advisable.
- (2) At every examination of a depository institution careful inquiry shall be made as to:
 - (a) the condition and resources of the institution examined;
 - (b) the mode of conducting and managing of its affairs;
 - (c) the actions of its directors and officers;
 - (d) the investment and disposition of its funds;
 - (e) the security offered to depositors and other customers;
 - (f) whether or not it is violating any provision of law relating to the institution or the business of the institution examined;
 - (g) whether or not it is complying with its articles of incorporation and bylaws; and
 - (h) such other matters as the commissioner may prescribe.
- (3) The commissioner may, in his discretion, accept examinations of any institution which are made by federal examiners or examiners from other states having jurisdiction over that institution in lieu of any examination required under the laws of this state.
- (4) The nature and extent of examination of institutions or other business entities not classified as depository institutions but otherwise subject to the jurisdiction of the department as provided in this title shall be such as the commissioner may determine to be necessary or appropriate in determining whether or not the business is being conducted in accordance with law and the regulations of the department.

Enacted by Chapter 16, 1981 General Session

7-1-315 Examination by board of directors required -- Report.

The commissioner may at any time require the board of directors of any or all institutions under his jurisdiction to fully examine or have fully examined the books, papers, and affairs of the institution of which they are directors and particularly the loans, discounts, and overdrafts of such institutions to ascertain the value and security thereof and the collateral security, if any, given in connection therewith and to inquire into such other matters as the commissioner may consider necessary and to have a report placed on file with the records of the institution, which report shall be subject to examination by the commissioner.

Enacted by Chapter 16, 1981 General Session

7-1-316 Forms for reports required from institutions.

The commissioner shall prescribe the forms for all reports required by law or regulation from financial institutions subject to the jurisdiction of the department and may change the forms at his discretion. The department shall furnish without charge upon the request of any such institution any blank form necessary or required by law.

Enacted by Chapter 16, 1981 General Session

7-1-317 Reports of condition called for by commissioner.

The commissioner may call upon any institution under the jurisdiction of the department for a report of its condition at the close of business on any day specified in the call within the preceding three months. The reports required shall be transmitted by the institution to the commissioner within 30 days after the date of the call. Reports prepared by an independent certified public accountant or reports accepted by supervisory agencies of the United States or other states shall be acceptable.

Enacted by Chapter 16, 1981 General Session

7-1-318 Reports of condition -- Form -- Falsification or failure to file.

- (1) Each institution under the jurisdiction of the department, including each out-of-state depository institution operating a branch in this state, shall provide a report of its condition to the department at least twice a year, as required by the commissioner. The commissioner may require an institution to provide more frequent reports as necessary.
- (2) The report shall be made according to the form prescribed by the commissioner and shall be verified by the oath or affirmation of the president or a vice president and attested by at least two directors.
- (3) It is a third degree felony for any officer, director, or employee of a financial institution to do any of the following:
 - (a) knowingly subscribe or cause to be made any false statement or report to the commissioner or department;
 - (b) knowingly subscribe or cause to be made any false entry in the books or accounts of the institution; or
 - (c) knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine the institution.
- (4) Each institution that fails or neglects to make a report within 30 days after receiving a call for any report required by this title, by an order of the commissioner, or by any rule of the department is subject to a penalty of \$50 a day for each day the report is past due. The commissioner may reduce or waive the penalty for good cause shown.
- (5) It is criminal perjury for any officer or employee of a financial institution under the jurisdiction of the department to willfully swear falsely in making an oath or affirmation concerning a report of the institution's condition.
- (6) For information purposes, and without being subject to penalties under state law, a federally chartered depository institution operating a main office or branch in this state shall provide to the department a copy of its regular report of condition filed with its chartering agency.

Amended by Chapter 49, 1995 General Session

7-1-319 Notice to county attorney or district attorney of criminal violations -- Attorney general to conduct actions commenced by commissioner -- Assistance of county attorney or district attorney.

The commissioner shall inform the county attorney or district attorney in the county in which the principal office of an institution is located of any violation of any provision of law which constitutes a misdemeanor or felony by an officer, director, or employee of any institution under his jurisdiction which shall come to his notice, and upon receipt of such information the county attorney or district attorney shall institute proceedings to enforce the provisions of the law. The attorney general shall

conduct all actions, suits, and proceedings begun by the commissioner under authority of law and may call to his assistance the county attorney or district attorney of the county in which the action, suit, or proceeding is conducted, and it shall be the duty of the county attorney or district attorney to render such assistance as the attorney general may require.

Amended by Chapter 38, 1993 General Session

7-1-320 Actions to enjoin violations -- Bond not required -- Recovery -- Attorney's fees.

- (1) Whenever it appears to the commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of this title or any rule, regulation, or order of the commissioner or the department, he may bring an action in an appropriate court of general jurisdiction to enjoin the acts or practices and to enforce compliance with this title or any rule or order issued under this title. Upon a proper showing, a permanent or temporary injunction, restraining order, or extraordinary writ shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.
- (2) If the court finds that the defendant in an action brought by the commissioner pursuant to this section has violated or is about to violate any provision of this title or any rule or order of the commissioner, the court may award to the department an amount not exceeding \$10,000 per day for each day the defendant was in violation. The court may also award the department reasonable attorney's fees.

Amended by Chapter 133, 1991 General Session

7-1-321 Powers and duties of commissioner to carry out purposes of title.

The commissioner shall have such other powers, duties, and responsibilities as shall be necessary or appropriate to carry out the provisions and purposes of this title and to prevent evasion thereof, to promote and insure the safety, soundness, and stability of institutions subject to the jurisdiction of the department or to protect the interest of depositors and other customers of the institutions.

Enacted by Chapter 16, 1981 General Session

7-1-322 Orders of commissioner -- Writing -- Service -- Contents -- Enforcement.

Any order issued by the commissioner under authority of this title shall be in writing, delivered to the institution or institutions affected and shall state the findings of the commissioner and the action required. The order shall specify the effective date thereof, which may be immediate or may be at a later date, and such order shall remain in effect until withdrawn by the commissioner or until terminated by a court order. The order of the commissioner, upon application made on or after the effective date of the order by the commissioner to a court of general jurisdiction in the county in which the principal office of the institution is located, may be enforced ex parte and without notice by an order to comply entered by the court.

Enacted by Chapter 16, 1981 General Session

7-1-323 Regulation of interstate operations -- Coordination of efforts.

- (1) The commissioner may:

- (a) examine, supervise, and regulate a branch operated in this state by a depository institution chartered by another state and take any action or issue any order with regard to that branch;
 - (b) examine, supervise, and regulate a branch operated in another state by a depository institution chartered by this state and take any action or issue any order with regard to that branch; and
 - (c) coordinate these activities with any other state or federal agency that shares jurisdiction over the institution.
- (2) The commissioner may coordinate the examination, supervision, and regulation of any depository institution chartered by this state with the examination, supervision, and regulation of an affiliated depository institution operating in another state.
- (3) The commissioner may take any reasonable and lawful action in furtherance of coordinating the regulation of interstate operations, including:
- (a) negotiating and entering into cooperative agreements with an agency of another state or of the federal government;
 - (b) sharing information and reports in accordance with Section 7-1-802 with an agency that shares jurisdiction over the institution;
 - (c) accepting as sufficient, if appropriate, examination reports and other information compiled or generated by or for an agency that shares jurisdiction over the institution;
 - (d) contracting with an agency that shares jurisdiction over the institution to engage the services of its examiners at a reasonable rate of compensation;
 - (e) offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the institution;
 - (f) collecting fees on behalf of, or receiving payment of fees through, an agency that shares jurisdiction over the institution; and
 - (g) cooperating in any other way with other supervisory agencies and professional associations to promote the efficient, safe, and sound operation and regulation of interstate depository institution activities, including the formulation of interstate examination policies and procedures and the drafting of model laws, rules, and agreements.
- (4) A contract between the department and an agency that shares jurisdiction over a depository institution to provide examiners to aid in interstate examination and regulation is considered a sole source contract under Section 63G-6a-802.

Amended by Chapter 347, 2012 General Session

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

- (1) As used in this section:
- (a) "Class of depository institution" means a class consisting of:
 - (i) banks;
 - (ii) credit unions;
 - (iii) industrial banks; or
 - (iv) wholly owned subsidiaries of a depository institution listed in this Subsection (1)(a).
 - (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.
 - (c) "Debt suspension agreement" is as defined in Section 31A-21-109.
- (2) Subject to the other provisions of this section, the commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (a) authorize any member of a class of depository institution that is subject to the jurisdiction of the department to issue:
 - (i) a debt cancellation agreement; or

- (ii) a debt suspension agreement; and
 - (b) regulate the issuance of a debt cancellation agreement or a debt suspension agreement issued in this state by a member of a class of depository institution.
- (3)
 - (a) Any rule adopted by the commissioner under this section as applied to a class of depository institution shall be substantially similar to any federal regulation applying to the same class of depository institution.
 - (b) Any rule adopted by the commissioner applicable to a class of depository institution described in this Subsection (3)(b) shall be substantially similar to any federal regulation applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt cancellation agreement or debt suspension agreement for that class of depository institution.
- (4)
 - (a) An out-of-state depository institution may issue a debt cancellation agreement or debt suspension agreement in this state if:
 - (i) the home state of the out-of-state depository institution authorizes and regulates the issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state depository institution; and
 - (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with regulations from the out-of-state depository institution's home state that regulate the issuance of a debt cancellation agreement or a debt suspension agreement.
 - (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in this state by the class of depository institution to which the out-of-state depository institution belongs if the regulations of the out-of-state depository institution's home state do not provide at least the same level of protection with respect to a debt cancellation agreement or debt suspension agreement as the rules adopted by the commissioner under this section with respect to the same class of depository institution:
 - (i) for the safety and soundness of the depository institution; and
 - (ii) for consumer protections for the borrowers of the depository institution.

Amended by Chapter 73, 2013 General Session

7-1-325 Compliance with applicable federal law.

- (1) As used in this section, "federal law" means:
 - (a) a statute passed by the Congress of the United States; or
 - (b) a final regulation:
 - (i) adopted by an administrative agency of the United States government; and
 - (ii) published in the code of federal regulations or the federal register.
- (2)
 - (a) An institution subject to the jurisdiction of the department violates this title if the institution violates a federal law:
 - (i) that is applicable to the institution; and
 - (ii) pursuant to the terms of the federal law in effect on the day the institution violates the federal law.
 - (b) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this title, designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department.

- (3) Except for criminal penalties, the department may enforce a violation described in Subsection (2) by taking any action:
 - (a) permitted by:
 - (i) this part;
 - (ii) Chapter 2, Possession of Depository Institution by Commissioner;
 - (iii) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies;
 - (iv) in the case of a check casher or deferred deposit lender, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act; or
 - (v) in the case of a title lender, Chapter 24, Title Lending Registration Act; and
 - (b) including bringing an action permitted under this title in state court.

Amended by Chapter 96, 2008 General Session

Amended by Chapter 382, 2008 General Session

Part 4 Fees

7-1-401 Fees payable to commissioner.

- (1) Except for an out-of-state depository institution with a branch in Utah, a depository institution under the jurisdiction of the department shall pay an annual fee:
 - (a) computed by averaging the total assets of the depository institution shown on each quarterly report of condition for the depository institution for the calendar year immediately preceding the date on which the annual fee is due under Section 7-1-402; and
 - (b) at the following rates:
 - (i) on the first \$5,000,000 of these assets, the greater of:
 - (A) 65 cents per \$1,000; or
 - (B) \$500;
 - (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
 - (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
 - (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
 - (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
 - (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
 - (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.
- (2) A financial institution with a trust department shall pay a fee determined in accordance with Subsection (7) for each examination of the trust department by a state examiner.
- (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall pay a basic fee of \$25 instead of the fee required under Subsection (1).
- (4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay:
 - (a) an annual fee of \$500; and
 - (b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.
- (5) Any person or institution under the jurisdiction of the department that does not pay a fee under Subsections (1) through (4) shall pay:
 - (a) an annual fee of \$200; and

- (b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.
- (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:
 - (a)
 - (i) a filing fee of \$500 if on the day on which the application or request is filed the person:
 - (A) is a person with authority to transact business as a depository institution, a trust company, or any other person described in Section 7-1-501 as being subject to the jurisdiction of the department; and
 - (B) has total assets in an amount less than \$5,000,000; or
 - (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and
 - (b) all reasonable expenses incurred in processing the application.
- (7)
 - (a) Per diem assessments for an examination shall be calculated at the rate of \$55 per hour:
 - (i) for each examiner; and
 - (ii) per hour worked.
 - (b) For an examination of a branch or office of a financial institution located outside of this state, in addition to the per diem assessment under this Subsection (7), the institution shall pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.
- (8) In addition to a fee under Subsection (5), a person registering under Section 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.
- (9) In addition to a fee under Subsection (5), a person applying for licensure under Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

Amended by Chapter 1, 2018 Special Session 3

7-1-402 Time for payment of fees -- Schedule of additional fees -- Revocation of permit or license for failure to pay fees.

- (1) All financial institutions or other persons under the jurisdiction of the department shall pay to the commissioner for the fiscal year beginning July 1, 1987, and annually thereafter, the fees, charges, and assessments for the costs of supervision, examination, and administration of the department and for processing all applications and notices as required under this title.
- (2) All per diem and other examination fees shall be paid promptly upon order of the commissioner after completion of an examination. All other fees, unless otherwise provided, shall be assessed on July 1 and shall be payable to the commissioner on or before July 15.
- (3) Any financial institution or other person subject to the jurisdiction of the department as of July 1 of each year shall pay the total fee for the fiscal year of July 1 through June 30.
- (4) The commissioner may adopt a schedule of fees in addition to those provided in this section that may be assessed for services rendered by the department. These fees shall be reasonable and fair and shall reflect the cost of the services provided.
- (5) The fees and assessments established in this section shall be in addition to any other fee or tax imposed by law.
- (6) The commissioner may revoke the license or permit of any institution under the jurisdiction of the department for failure to pay the fees, charges, or assessments as provided in this title.

Amended by Chapter 133, 1991 General Session

7-1-403 Funds and balances paid to treasurer -- Separate account -- Use of funds.

- (1) The commissioner shall deposit unexpended balances and money accruing to the department with the state treasurer monthly. The unexpended balances and money accruing to the department constitute a separate account within the General Fund. No part of the account may revert to the General Fund except an amount as required by law to be transferred for general government and administrative costs.
- (2) With the approval of the director of the Division of Finance, the commissioner may withdraw money from the account to pay costs and expenses of administration incurred in proceedings under Chapter 1, General Provisions, Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, or to use in connection with the rehabilitation, reorganization, or liquidation of an institution under the jurisdiction of the department.
- (3) The commissioner, after consultation with the Board of Financial Institutions and with the approval of the director of the Division of Finance, may withdraw money from the account to promote, protect, and encourage the dual banking system and state-chartered institutions.

Amended by Chapter 189, 2014 General Session

Amended by Chapter 345, 2014 General Session

Part 5
Jurisdiction of Department

7-1-501 Institutions and persons subject to jurisdiction of department.

- (1) As provided in this title and the rules of the department, the persons and institutions described in Subsection (2) are subject to:
 - (a) the jurisdiction of the department; and
 - (b) supervision and examination by the department.
- (2) Subsection (1) applies to:
 - (a) a depository institution chartered under the laws of this state, including any out-of-state branch of the depository institution;
 - (b) a Utah depository institution chartered by the federal government, but only to the extent the application of this title is authorized by:
 - (i) federal law; or
 - (ii) the appropriate federal regulatory agency;
 - (c) a Utah branch of an out-of-state depository institution chartered under the laws of another state;
 - (d) a Utah branch of an out-of-state depository institution chartered by the federal government, but only to the extent the application of this title is authorized by:
 - (i) federal law; or
 - (ii) the appropriate federal regulatory agency;
 - (e) a service corporation or service organization, including a credit union service organization as defined in Section 7-9-3;
 - (f) a trust company;
 - (g) an escrow company;
 - (h) a person or institution engaged in this state in the business of:

- (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other accounts in depository institutions;
 - (ii) operating a loan production office for:
 - (A) a Utah depository institution;
 - (B) an out-of-state depository institution; or
 - (C) a foreign depository institution;
 - (iii) a check casher or deferred deposit lender, as defined in Section 7-23-102;
 - (iv) a title lender, as defined in Section 7-24-102; or
 - (v) money transmission, as defined in Section 7-25-102;
 - (i) a corporation or other business entity owning or controlling an institution subject to the jurisdiction of the department;
 - (j) subject to Subsection (3), a technology service provider that provides services to a depository institution subject to the jurisdiction of the department;
 - (k) a subsidiary or affiliate of an institution subject to the jurisdiction of the department; and
 - (l) any person or institution that, with or without authority to do so, transacts business as, or holds itself out as being, a depository institution, trust company, or any other person or institution described in this section as being subject to the jurisdiction of the department.
- (3) A technology service provider is subject to regulation and examination by the commissioner to the same extent as if the service or activity of the technology service provider were being performed by the depository institution itself.

Amended by Chapter 288, 2016 General Session

7-1-502 Limitations on jurisdiction of department.

- (1) The jurisdiction of the department with respect to the persons and institutions described in Section 7-1-501 is limited as follows:
- (a) to the portion of the business activities conducted in this state or with residents of this state, whether conducted solely or jointly by combination or contract; and
 - (b) to business activities that the department is not prohibited from regulating by the United States Constitution or laws of the United States.
- (2) The jurisdictional limitations in Subsection (1) do not prohibit the commissioner from requiring an institution described in Section 7-1-501 to make available for inspection and examination books and records applicable to its business activities in this state, conducted with residents of this state, or relevant to the safety or soundness of a branch in this state. These book and records may include any report filed with a federal or state supervisory agency having jurisdiction over the institution.
- (3) Section 7-1-501 does not authorize the department to supervise or regulate, by setting interest rates or otherwise, the operation of money market mutual funds or similar investments subject to supervision and regulation by another department or agency of this state or of the United States.

Amended by Chapter 49, 1995 General Session

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

- (1) As used in this section, "security" has the same meaning as in Section 61-1-13, except that "security" does not include:
- (a) a certificate of deposit or similar instrument issued by:

- (i) a bank;
 - (ii) a savings and loan association;
 - (iii) a credit union; or
 - (iv) an industrial bank;
- (b) a loan participation, letter of credit, or other form of indebtedness incurred in the ordinary course of business by:
- (i) a bank;
 - (ii) a savings and loan association;
 - (iii) a credit union; or
 - (iv) an industrial bank; or
- (c)
- (i) a promissory note or other evidence of indebtedness and the underlying security for it;
 - (ii) a lease of personal property;
 - (iii) a contract to sell real or personal property; or
 - (iv) any other loan or investment sold by a depository institution in the secondary market.
- (2)
- (a) A person subject to the jurisdiction of the department may not, directly or indirectly, issue, offer, offer to sell, offer for sale, or sell a security of which it is the issuer without:
- (i) the prior approval of the commissioner;
 - (ii) payment of the fee prescribed in Section 7-1-401; and
 - (iii) complying with the rules of the department with respect to securities.
- (b) The commissioner may extend the approval described in Subsection (2)(a)(i) for one or more additional periods not to exceed six months each:
- (i) if the person described in Subsection (2)(a) makes written application before the expiration of the period of approval; and
 - (ii) for good cause shown.
- (3)
- (a) A person not otherwise subject to the jurisdiction of the department may not issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in an account or to purchase or invest in an instrument creating or evidencing a debtor-creditor relationship, if the account or instrument is represented to be an account with or an instrument issued by a financial institution subject to the jurisdiction of the department, without:
- (i) the prior approval of the commissioner;
 - (ii) payment of the fee prescribed in Section 7-1-401; and
 - (iii) complying with the rules of the department with respect to securities.
- (b) Subsection (3)(a) does not apply to:
- (i) insurance companies that have been issued certificates of authority under Title 31A, Insurance Code;
 - (ii) brokers or dealers registered under:
 - (A) Title 61, Chapter 1, Utah Uniform Securities Act; or
 - (B) the federal Securities Exchange Act of 1934; or
 - (iii) nondepository institutions to the extent that the securities are not offered for sale or sold through or by agents, representatives, officers, or employees of an affiliated Utah depository institution; or
 - (iv) out-of-state depository institution with at least one branch in Utah or otherwise offered for sale or sold on its premises.
- (4) The rules of the department:
- (a) shall, at a minimum, require registration with the department; and

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

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

Amended by Chapter 73, 2013 General Session

7-1-505 Rules and regulations governing persons or institutions not regulated under other chapters of title.

With respect to any person or institution or class of institutions subject to the jurisdiction of the department under this part and not regulated or supervised under any other chapter of this title, the commissioner shall issue appropriate rules and regulations consistent with the purposes and provisions of this title governing the regulation, supervision, and examination of those persons, institutions, or classes of institutions.

Amended by Chapter 356, 2009 General Session

7-1-507 Assessing institution's record in meeting credit needs -- Requirements -- Remedial order.

- (1) With respect to institutions subject to the jurisdiction of the department that are engaged in soliciting deposits or selling or offering for sale evidences of indebtedness or similar investments, the commissioner shall periodically assess the institution's record of meeting the credit needs of residents of this state in relation to the deposits received from or investments sold to residents of this state.
- (2) The commissioner may not impose requirements more restrictive than those applicable to federally chartered or federally insured depository institutions doing business in this state.
- (3) The commissioner may order an institution to take remedial action consistent with the safe and sound operation of the institution that will promote the availability of credit to Utah residents.

Amended by Chapter 161, 1987 General Session

7-1-508 Conviction for fraud or dishonest conduct as disqualification to serve as officer, director or employee or to take control of a depository institution -- Violation as misdemeanor.

Except as may be expressly authorized by the commissioner, no person convicted of a felony or a misdemeanor involving fraud or dishonest conduct may serve as an officer, director, or employee of a depository institution. No such person, acting directly or indirectly or through or in concert with any one or more persons may acquire control of any depository institution. Violation of this paragraph is a class A misdemeanor.

Enacted by Chapter 16, 1981 General Session

7-1-510 Examination of institutions -- Adoption of rules -- Requiring actions by institutions.

If the commissioner finds that it is in the public interest and necessary to protect the depositors and other customers of a financial institution, he may:

- (1) examine the books and records of any financial institution holding company and require the company to furnish whatever reports that he considers appropriate to properly supervise the company's financial institution subsidiaries;

- (2) adopt and issue rules consistent with the purposes and provisions of this title as they pertain to financial institution holding companies; and
- (3) require a financial institution holding company to take any action he finds reasonable and necessary to protect the interests of depositors, other customers, and creditors of any subsidiary financial institution, to maintain its solvency or to prevent its failure.

Amended by Chapter 161, 1987 General Session

Part 6

Deposit Accounts

7-1-601 Adverse claim to account in depository institution -- Notice required -- Bond may be required for payment.

Receipt of a notice of an adverse claim to a deposit or other account standing on the books of any depository institution doing business in this state does not obligate the depository institution to the adverse claimant, unless the notice is given pursuant to an appropriate court order, obtained by the adverse claimant in a legal action instituted by him in which the person to whose credit the deposit stands is made a party. Such depository institution may also pay the adverse claim, if the claimant executes to the depository institution a good and sufficient bond in double the amount claimed, indemnifying it from any and all liability, loss, damage, costs and expenses including attorneys' fees for and on account of the payment of the adverse claim or the dishonor of a check or other instrument of the person to whose credit the deposit stands on its books.

Enacted by Chapter 16, 1981 General Session

7-1-602 Final settlement of transaction account -- Limitation of action on accuracy of statement -- Duty to examine statement and notify of errors unaffected.

- (1) Two years after a statement of a checking or other transaction account has been rendered to a depositor, the account shall be considered finally adjusted and settled and its correctness conclusively presumed as of the date the statement is rendered.
- (2) The depositor may not maintain an action on the correctness or accuracy of the statement of account unless it is commenced within two years next after the date the statement was rendered.
- (3) For the purpose of this section a statement of account shall be considered rendered if at the time the statement is purported to have been made, the depository institution in the course of its business regularly mailed or otherwise delivered to its depositor customers monthly or at other regular intervals statements of their checking and other transaction accounts, itemizing debit and credit entries.
- (4) The date the statement is rendered is considered to be the first day of the month following the period covered by the statement as evidenced by the record of the account kept by the depository institution.
- (5) Nothing in this section relieves a depositor from the duties imposed under Section 70A-4-406 to examine the statement of account, when rendered by the depository institution, and to immediately notify the depository institution of any errors discovered in it, nor from the legal consequences of neglect of those duties.

Enacted by Chapter 16, 1981 General Session

7-1-603 Final settlement of savings account -- Limitation of action on accuracy of statement.

- (1) If the depository institution in the course of its business regularly records the credit balances of savings accounts in the savings account passbooks of its depositors or renders statements of the credit balances in their savings accounts at regular intervals, the credit balance of any savings account with the depository institution as evidenced by its records is considered, after a period of six years from the date of the credit balance as shown by these records, to be finally adjusted and settled and its correctness is conclusively presumed.
- (2) The owner of the savings account may not maintain an action on the correctness or accuracy of the credit balance, unless it is commenced within the six-year period described in Subsection (1).

Enacted by Chapter 16, 1981 General Session

7-1-604 Savings accounts -- Qualifications to hold -- Representation -- Transfer -- Holder treated as owner -- Exception.

- (1) Savings accounts may be opened and held solely and absolutely by any adult or minor individual, male or female, single or married in his or her own right or in trust or other fiduciary capacity for any such adult or minor.
- (2) Savings accounts shall be represented only by the account of each savings account holder on the books of the depository institution.
- (3) Savings accounts shall be transferable only on the books of the depository institution and only upon written application. Acceptance by the institution of the transferee as an account holder may only be upon terms approved by its board of directors. Nothing in this subsection shall be construed as prohibiting the transfer of part or all of the funds in a transaction account to a third party by means of checks, drafts, or other instruments or by electronic means.
- (4) The institution may treat the holder of record of a savings account as the owner of the account for all purposes and may disregard any notice to the contrary, unless the institution has acknowledged, in writing, notice of a pledge of the savings account.

Enacted by Chapter 16, 1981 General Session

7-1-605 Savings accounts -- Special terms to be in writing.

Any special terms and provisions applicable to a savings account, the ownership of a savings account, or the conditions upon which withdrawals may be made, or all of those, shall be clearly and truthfully set forth in writing. The provisions appearing on a signature card or in rules and regulations for the account shall satisfy the foregoing requirements of this section.

Enacted by Chapter 16, 1981 General Session

7-1-606 Savings accounts and credit union share accounts -- Form of ownership certificate.

A certificate of ownership may be issued to each savings account or credit union share account holder of record as shown by the books of the institution and may be in separate certificate form, or from time to time incorporated in an account book, statement of account, certificate of savings account withdrawal value, or card, device or other evidence or means of access or identity or may be shown in book entry form on the books of the institution, at the discretion of the institution.

An account established in statement, book entry or other form shall be evidenced by a written agreement and deposits shall be confirmed by issuance of a receipt or advice.

Amended by Chapter 8, 1983 General Session

7-1-607 Lost or destroyed account book or certificate.

If the holder of record of an account as shown by the books of a depository institution, or his legal representative, files with the institution an affidavit to the effect that the account book or certificate has been lost or destroyed and has not been pledged or assigned in whole or in part, the institution shall issue a new account book or certificate in the name of the holder of record. The new account book or certificate shall state that it is issued in lieu of the one lost or destroyed. The institution is not liable thereafter on the original account book or certificate. However, the board of directors of the institution shall, if in its judgment it is necessary, require a bond in an amount it considers sufficient to indemnify the institution against any loss which might result from the issuance of the new account book or certificate.

Amended by Chapter 378, 2010 General Session

7-1-608 School or institutional savings plans authorized.

A depository institution may contract with any public or non-public elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the depository institution in any school or institutional savings plan, and it may accept savings accounts at the school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the depository institution for that purpose.

Enacted by Chapter 16, 1981 General Session

7-1-609 Payroll deduction savings -- Direct deposit of wages.

A depository institution may contract with an employer with respect to the:

- (1) solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account of an employer's employee who voluntarily elects to participate; or
- (2) direct deposit by electronic or other medium of wages or salary paid by the employer to the account of the employee in a depository institution upon the employee's designation in writing of the depository institution as the recipient of the deposits.

Amended by Chapter 90, 1996 General Session

7-1-610 Attorney-in-fact as to savings account -- Institution immune from liability.

Any depository institution may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a holder, whether minor or adult, until it is on actual notice of the revocation of his authority. No such institution shall be liable for damages, penalty, or tax by reason of any payment made under this section.

Enacted by Chapter 16, 1981 General Session

7-1-611 Deposit accounts of minors or married persons.

- (1) A depository institution may issue a deposit account to a married person or minor as the sole and absolute owner of the deposit account, and receive payment on the account by or for the owner, and pay withdrawals, accept pledges to the institution, and act in any other manner with respect to the account on the order of the married person or minor.
- (2) A payment or delivery of rights to a married person or minor, or a receipt or acquisition signed by a married person or minor who holds a deposit account, shall be a valid and sufficient release and discharge of the institution for any payment so made or delivery of rights to the married person or minor.
- (3) In the case of a minor, the receipt, acquittance, pledge, or other action required by the institution to be taken by the minor shall be binding upon the minor with like effect as if the minor were of full age and legal capacity.
- (4) The parent or guardian of the minor may not in the capacity as parent or guardian have the power to attach or in any manner to transfer any deposit account issued to or in the name of the minor. However, in the event of the death of the minor, the receipt or acquittance of either parent or of a person standing in loco parentis to the minor shall be a valid and sufficient discharge of the institution for any sum or sums not exceeding in the aggregate \$2,500, unless the minor gave written notice to the institution not to accept the signature of the parent or person.

Amended by Chapter 182, 1996 General Session

7-1-612 Pledge or hypothecation of joint savings accounts.

The pledge or hypothecation to any depository institution of all or part of a savings account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the institution of that part of the account pledged or hypothecated, and does not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

Amended by Chapter 378, 2010 General Session

7-1-613 Incompetency of savings account owner.

When a savings account is held in any depository institution by a person who becomes incompetent and an adjudication of incompetency has been made by a court of competent jurisdiction, the institution may pay or deliver the withdrawal value of the savings account and any earnings that may have accrued on the account to the conservator for that person upon proof of his appointment and qualification. However, if the institution has received no written notice and is not on actual notice that the savings account holder has been adjudicated incompetent, it may pay or deliver the funds to the holder in accordance with the provision of the savings account contract, and the receipt or acquittance of the holder therefor shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made.

Enacted by Chapter 16, 1981 General Session

7-1-616 Authority to accept transaction accounts -- Payment of instruments.

- (1) A financial institution may accept or advertise that it accepts transaction accounts only if authorized to do so under federal or state law. An institution may submit a written request for this authority to the commissioner, except that an institution authorized to accept transaction

- accounts as of June 1, 1994, does not, in the first instance, need to request or be granted any additional authority. The commissioner shall grant the authority if the commissioner finds that:
- (a) the institution has adequate capital and reserves in relation to the character and condition of its assets and its deposit and other liabilities;
 - (b) the deposits and other accounts held by the institution are insured or guaranteed by an agency of the federal government; and
 - (c) the management of the institution is qualified to handle transaction accounts.
- (2) The commissioner may revoke, limit, or condition an institution's authority to accept and handle transaction accounts upon a finding that:
- (a) the institution no longer meets the criteria set forth in Subsection (1); or
 - (b) it would be contrary to the public interest and the soundness of the financial system of this state to allow the institution to continue to accept or handle transaction accounts without limitation or condition.
- (3) One or more depository institutions may, by written agreement, vary the terms of Title 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, and Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, for the purposes of facilitating the transfer, exchange, and prompt payment of instruments drawn on transaction accounts.

Amended by Chapter 189, 2014 General Session

7-1-617 No concentration limit under state law.

- (1) There is no state deposit cap or concentration limit under Utah law. A depository institution or depository institution holding company may control any percentage of the total deposits held within this state by all depository institutions of the same class.
- (2) To the extent authorized by federal law, the commissioner may, on a case by case basis, waive any applicable federal deposit concentration limit that has the effect of being more limiting than Subsection (1). In making a decision to waive a federal deposit concentration limit, the commissioner shall apply a standard that does not discriminate against out-of-state depository institutions, upon a finding that the waiver promotes:
 - (a) the availability of financial services;
 - (b) the marketability of Utah depository institutions; or
 - (c) another public interest.
- (3) This section does not affect the applicability, if any, of antitrust law.

Enacted by Chapter 49, 1995 General Session

7-1-618 Deposit production offices prohibited.

- (1) Except as provided in Subsection (2), it is unlawful to establish or operate a deposit production office or similar office in this state for the purpose of soliciting deposits or similar evidence of indebtedness or participation interests in indebtedness.
- (2) This prohibition does not apply to:
 - (a) activities conducted at a main office or branch of the depository institution conducting the activities; or
 - (b) activities conducted at the main office or branch of an affiliate depository institution acting as an agent to the extent permitted under Section 7-1-716.

Enacted by Chapter 49, 1995 General Session

7-1-619 Savings promotion programs.

(1) As used in this section:

- (a) "Prize period" means a period of time, designated by a depository institution, during which a qualifying account holder may submit an entry into the depository institution's savings promotion program for a chance to win a prize designated as the prize for that period.
 - (b) "Qualifying account" means a savings account that qualifies the savings account holder for an entry into the saving account's depository institution's savings promotion program each time the holder of the savings account:
 - (i) deposits a minimum amount of money specified by the depository institution into the savings account; and
 - (ii) leaves the minimum deposit in the savings account for no less than an amount of time specified by the depository institution.
 - (c) "Qualifying account holder" means a person who holds a qualifying account.
 - (d) "Savings promotion program" means a contest:
 - (i) that a depository institution conducts to encourage savings deposits; and
 - (ii) in which a qualifying account holder is offered a chance to win a designated prize for each entry submitted in association with the qualifying account holder's qualifying account.
- (2) A depository institution may conduct a savings promotion program if:
- (a) no qualifying account holder is required to:
 - (i) pay a fee or otherwise provide any consideration to submit an entry in the savings promotion program; or
 - (ii) be present at a prize drawing in order to win;
 - (b) any fee charged by a depository institution in connection with a qualifying account is comparable with a fee charged in connection with a comparable nonqualifying account the depository institution offers;
 - (c) any interest rate a depository institution associates with a qualifying account is comparable to an interest rate associated with a comparable nonqualifying account the depository institution offers;
 - (d) each entry in the savings promotion program during a single prize period has an equal chance of winning; and
 - (e) the depository institution:
 - (i) conducts the savings promotion program in a manner that does not:
 - (A) jeopardize the depository institution's ability to operate in a safe and sound manner; or
 - (B) mislead the depository institution's account holders; and
 - (ii) fully discloses the terms and conditions of the savings promotion program to each of the depository institution's account holders.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules that:
- (a) require a depository institution that conducts a savings promotion program to maintain all records the commissioner determines necessary for the administration and enforcement of this section; or
 - (b) ensure that a depository institution conducts a savings promotion program in accordance with this section.

Enacted by Chapter 169, 2019 General Session

Part 7 Authorization Required to Conduct Business

7-1-701 Representing and transacting business as financial institution restricted -- Restricted names -- Penalty.

- (1) As used in this section, "transact business" includes:
 - (a) advertising;
 - (b) representing oneself in any manner as being engaged in transacting business;
 - (c) registering an assumed name under which to transact business; or
 - (d) using an assumed business name, sign, letterhead, business card, promotion, or other indication that one is transacting business.
- (2) Unless authorized by the department or an agency of the federal government to do so, it is unlawful for a person to:
 - (a) transact business as a:
 - (i) bank;
 - (ii) savings and loan association;
 - (iii) savings bank;
 - (iv) industrial bank;
 - (v) credit union;
 - (vi) trust company; or
 - (vii) other financial or depository institution; or
 - (b) engage in any other activity subject to the jurisdiction of the department.
- (3)
 - (a) Except as provided in Subsections (3)(b) through (d), only the following may transact business in this state under a name that includes "bank," "banker," "banking," "banque," "banc," "banco," "bancorp," "bancorporation," a derivative of these words, or another word or combination of words reasonably identifying the business of a bank:
 - (i) a national bank;
 - (ii) a bank authorized to do business under Chapter 3, Banks;
 - (iii) a bank holding company; or
 - (iv) an industrial bank.
 - (b) A person authorized to operate in this state as a credit card bank, as described in Section 7-3-3:
 - (i) may transact business under the name "credit card bank"; and
 - (ii) may not transact business under the name of "bank" unless it is immediately preceded by "credit card."
 - (c) A nonbank subsidiary of a bank holding company may transact business under a name restricted in Subsection (3)(a) if the name:
 - (i) is also part of the name of its parent holding company; or
 - (ii) is used for a group of subsidiaries of the parent holding company.
 - (d) A bona fide trade association of authorized banks recognized by the commissioner may transact its affairs in this state under a name restricted under Subsection (3)(a) if it does not operate and does not hold itself out to the public as operating a depository or financial institution.
- (4)
 - (a) Except as provided in Subsection (4)(b), only the following may transact business in this state under a name that includes "savings association," "savings and loan association," "building

and loan association," "building association," a derivative of these words, or another word or combination of words reasonably identifying the business of a savings and loan association:

- (i) a federal savings and loan association; or
 - (ii) a federal savings bank.
- (b) A national bank may transact business under a name restricted in Subsection (4)(a) if the restricted words are part of the bank's corporate name.
- (5) Only the following may transact business under the name "savings bank":
- (a) a depository institution listed in Subsection (3)(a);
 - (b) a depository institution listed in Subsection (4)(a); or
 - (c) a depository institution authorized under the law of another state to operate in this state as a savings bank.
- (6)
- (a) Only an industrial loan company authorized to do business under Chapter 8, Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state under a name that includes "industrial loan company," "ILC," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial loan company.
 - (b) Only an industrial bank authorized to do business under Chapter 8, Industrial Banks, may transact business in this state under a name that includes "industrial bank," "thrift," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial bank.
- (7)
- (a) Except as provided in Subsection (7)(b), only a credit union authorized to do business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact business in this state under a name that includes "credit union" or another word or combination of words reasonably identifying the business of a credit union.
 - (b) The restriction in Subsection (7)(a) does not apply to a bona fide trade association of authorized credit unions recognized by the commissioner, a credit union chapter, or another association affiliated with a bona fide trade association of authorized credit unions recognized by the commissioner that restricts its services primarily to credit unions.
- (8)
- (a) Except as provided in Subsection (8)(b), only a person granted trust powers under Chapter 5, Trust Business, may transact business in this state under a name that includes "trust," "trustee," "trust company," or another word or combination of words reasonably identifying the business of a trust company.
 - (b) A business entity organized as a business trust, as defined in Section 7-5-1, may use "business trust" in its name if it does not hold itself out as being a trust company.
- (9) The restrictions of Subsections (3) through (8) do not apply to:
- (a) the name under which an out-of-state depository institution operates a loan production office in this state, if the commissioner approves the name as not being reasonably likely to mislead the public;
 - (b) the name under which a service organization of a financial institution transacts business, if the commissioner approves the name as not being reasonably likely to mislead the public;
 - (c) the name under which a subsidiary of a depository or financial institution transacts business, if the commissioner approves the name as not being reasonably likely to mislead the public; or
 - (d) a trade association or other nonprofit organization composed of members of a particular class of financial institutions using words applicable to that class.
- (10)

- (a) Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that the use of an otherwise restricted name or word is not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a depository or financial institution or is conducting a business subject to the jurisdiction of the department.
 - (b) In granting an exemption under Subsection (10)(a), the commissioner may restrict or condition the use of the name or word or the activities of the person or business as the commissioner considers necessary to protect the public.
- (11)
- (a) A person and a principal and officer of a business entity violating this section is guilty of a class A misdemeanor. Each day of violation constitutes a separate offense.
 - (b) In addition to a criminal penalty imposed under Subsection (11)(a), the commissioner may issue a cease and desist order against a person violating this section. The commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply with the cease and desist order.

Amended by Chapter 97, 2014 General Session

7-1-702 Interstate acquisition, merger, and branching.

- (1) A Utah depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:
 - (a) an out-of-state depository institution; or
 - (b) a holding company of an out-of-state depository institution.
- (2) An out-of-state depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:
 - (a) a Utah depository institution; or
 - (b) a holding company of a Utah depository institution.
- (3) A Utah depository institution may acquire, through merger or otherwise, a branch of a depository institution in another state without acquiring:
 - (a) the depository institution in the other state; or
 - (b) the charter of the depository institution described in Subsection (3)(a).
- (4) An out-of-state depository institution may acquire, through merger or otherwise, a branch of a depository institution in Utah without acquiring:
 - (a) the Utah depository institution; or
 - (b) the charter of the Utah depository institution.
- (5)
 - (a) A Utah depository institution may establish a de novo branch in any state that allows de novo interstate branching as described in 12 U.S.C. Secs. 36(g) and 1828(d)(4), as amended.
 - (b) Except as provided in Subsection (5)(c), de novo interstate branching in Utah is prohibited.
 - (c) An out-of-state depository institution may establish a de novo branch in Utah if the home state of that out-of-state depository institution permits a Utah state chartered depository institution to establish and maintain a de novo branch in that home state under substantially the same terms and conditions as that out-of-state depository institution establishes its de novo branch in Utah.
- (6)
 - (a) Any of the following may do anything described in Subsection (6)(b):
 - (i) a Utah depository institution or holding company that acquires an out-of-state depository institution;

- (ii) a Utah depository institution that is the resulting depository institution after merging with an out-of-state depository institution; or
 - (iii) a Utah depository institution that otherwise establishes or acquires a branch in a host state.
- (b) A depository institution or holding company described in Subsection (6)(a) may do any of the following in accordance with applicable state and federal law, including the law of the host state:
 - (i) continue to operate the out-of-state depository institution or branch;
 - (ii) convert any existing main office or branch in the host state into a branch of the Utah depository institution;
 - (iii) establish or acquire additional branches of the Utah depository institution in any state where the out-of-state depository institution could have done so if the out-of-state depository institution had not been acquired or merged; and
 - (iv) exercise any power and engage in any activity in a host state to the same extent as a depository institution of the same class whose home state is that state.
- (7)
 - (a) Any of the following may do anything described in Subsection (7)(b):
 - (i) an out-of-state depository institution or holding company that acquires a Utah depository institution;
 - (ii) an out-of-state depository institution that is the resulting depository institution after merging with a Utah depository institution; or
 - (iii) an out-of-state depository institution that otherwise establishes or acquires a branch in Utah.
 - (b) A depository institution or holding company described in Subsection (7)(a) may do any of the following in accordance with applicable state and federal law, including the law of this state:
 - (i) continue to operate the Utah depository institution or branch;
 - (ii) convert any existing main office or branch in Utah into a branch of the out-of-state depository institution;
 - (iii) establish or acquire additional branches of the out-of-state depository institution in any state where the Utah depository institution could have done so if the Utah depository institution had not been acquired or merged; and
 - (iv) exercise any power and engage in any activity in this state to the same extent as a depository institution of the same class whose home state is Utah.
- (8)
 - (a) A Utah branch of an out-of-state depository institution shall comply with:
 - (i) the law of the institution's home state; or
 - (ii) the federal law in the case of a federally chartered institution.
 - (b) If the laws of this state as a host state conflict with the laws of another state as a home state, the laws of the home state prevail except as provided in this section.
 - (c) The commissioner may order that Utah law prevails over home state law if the application of Utah law is necessary to:
 - (i) preserve the safe and sound operation of the Utah branch;
 - (ii) prevent significant competitive disadvantage to Utah depository institutions in local financial markets; or
 - (iii) otherwise protect the citizens of this state.
 - (d) The laws of this state regarding community reinvestment, consumer protection, fair lending, and intrastate branching apply to a Utah branch of an out-of-state depository institution to the same extent as those laws apply to a Utah branch of a depository institution chartered by this state.

- (e) An out-of-state depository institution authorized to operate a branch in Utah may underwrite or sell insurance, engage in the direct marketing of securities, or engage in the brokerage of real estate only to the extent permissible for a Utah depository institution of the same class.
- (9) Subsection (8) does not affect the jurisdiction or authority of the commissioner to:
 - (a) examine, supervise, and regulate an out-of-state depository institution operating or seeking to operate a branch in this state; or
 - (b) take any action or issue any order with regard to a branch described in Subsection (9)(a).
- (10) The acquisition of a charter entitles the acquiring institution to engage in any activity the acquired institution could have engaged in if the acquired institution had not been acquired, so long as the acquiring institution does not convert the acquired institution into, or operate it as, an institution of a different class.
- (11)
 - (a) The activities authorized in this section are subject to:
 - (i) the limitations for mergers and acquisitions set forth in Sections 7-1-703 and 7-1-705; and
 - (ii) the limitations for branching set forth in Section 7-1-708.
 - (b) An institution shall file all required applications and receive all appropriate approvals before engaging in any of the activities authorized in this section.
- (12) An out-of-state depository institution that operates a branch in this state shall:
 - (a) maintain a certificate of authority to transact business in this state;
 - (b) comply with all applicable corporate filing requirements under Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the same extent as any nondepository corporation transacting business in this state; and
 - (c) provide written notification to the department of the out-of-state depository certificate of authority to transact business in this state.

Amended by Chapter 211, 2001 General Session

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

- (1) Unless the commissioner gives prior written approval under Section 7-1-705, a person may not:
 - (a) acquire, directly or indirectly, control of a depository institution or depository institution holding company subject to the jurisdiction of the department;
 - (b) vote the stock of a depository institution or depository institution holding company subject to the jurisdiction of the department acquired in violation of Section 7-1-705;
 - (c) acquire all or a material portion of the assets of a depository institution or a depository institution holding company subject to the jurisdiction of the department;
 - (d) assume all or a material portion of the deposit liabilities of a depository institution subject to the jurisdiction of the department;
 - (e) take any action that causes a depository institution to become a subsidiary of a depository institution holding company subject to the jurisdiction of the department;
 - (f) take any action that causes a person other than an individual to become a depository institution holding company subject to the jurisdiction of the department;
 - (g) acquire, directly or indirectly, the voting or nonvoting securities of a depository institution or a depository institution holding company subject to the jurisdiction of the department if the acquisition would result in the person obtaining more than 20% of the authorized voting securities of the institution if the nonvoting securities were converted into voting securities; or
 - (h) merge or consolidate with a depository institution or depository institution holding company subject to the jurisdiction of the department.

- (2) A person who willfully violates this section or a rule or order issued by the department under this section is subject to a civil penalty of not more than \$1,000 per day during which the violation continues. The commissioner may assess the civil penalty after giving notice and opportunity for hearing. The commissioner shall collect the civil penalty by bringing an action in the district court of the county in which the office of the commissioner is located. An applicant for approval of an acquisition is considered to have consented to the jurisdiction and venue of the court by filing an application for approval.
- (3) The commissioner may secure injunctive relief to prevent a change in control or impending violation of this section.
- (4) The commissioner may lengthen or shorten any time period specified in Section 7-1-705 if the commissioner finds it necessary to protect the public interest.
- (5) The commissioner may exempt a class of financial institutions from this section by rule if the commissioner finds the exception to be in the public interest.
- (6) The prior approval of the commissioner under Section 7-1-705 is not required for the acquisition by a person other than an individual of voting securities or assets of a depository institution or a depository institution holding company that are acquired by foreclosure or otherwise in the ordinary course of collecting a debt previously contracted in good faith if these voting securities or assets are divested within two years of acquisition. The commissioner may, upon application, extend the two-year period of divestiture for up to three additional one-year periods if, in the commissioner's judgment, the extension would not be detrimental to the public interest. The commissioner may adopt rules to implement the intent of this Subsection (6).
- (7)
 - (a) An out-of-state depository institution without a branch in Utah, or an out-of-state depository institution holding company without a depository institution in Utah, may acquire:
 - (i) a Utah depository institution only if it has been in existence for at least five years; or
 - (ii) a Utah branch of a depository institution only if the branch has been in existence for at least five years.
 - (b) For purposes of Subsection (7)(a), a depository institution chartered solely for the purpose of acquiring another depository institution is considered to have been in existence for the same period as the depository institution to be acquired, so long as it does not open for business at any time before the acquisition.
 - (c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a depository institution that is subject to, or is in danger of becoming subject to, supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, or, if applicable, the equivalent provisions of federal law or the law of the institution's home state.
 - (d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger transaction between, affiliate depository institutions.

Amended by Chapter 169, 2017 General Session

7-1-704 Authorization required to engage in business -- Exemptions -- Procedure.

- (1)
 - (a) An institution subject to the jurisdiction of the department may maintain an office in this state or engage in the activities of a financial institution in this state only if it is authorized to do so by the department.
 - (b) This Subsection (1) does not apply to:

- (i) any person who is lawfully engaging in the activities of a financial institution in this state on July 1, 1981, unless the institution was not subject to the jurisdiction of the department before that date;
 - (ii) an application to establish a branch or additional office; or
 - (iii) the establishment of a service corporation or service organization.
- (2) An applicant for authorization to become an institution subject to the jurisdiction of the department shall pay to the department the appropriate filing fee, as provided in Section 7-1-401, and shall file with the commissioner:
 - (a) its undertaking to pay all expenses incurred in conducting any administrative proceedings forming part of the department's consideration of the application;
 - (b) its proposed articles of incorporation and by-laws;
 - (c) an application in a form prescribed by the commissioner that includes all information the commissioner requires about the source of the proposed original capital and about the identity, personal history, business background and experience, financial condition, and participation in any litigation or administrative proceeding of the organizers, the proposed members of the board of directors, and the principal officers; and
 - (d) any other information the commissioner requires.
- (3) In addition to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the commissioner shall, at the expense of the applicant:
 - (a)
 - (i) give notice of the application by publication in three successive issues of a newspaper of general circulation in the county where the principal place of business is to be established; and
 - (ii) give notice of the application by publication as required in Section 45-1-101; and
 - (b) give notice of the application to other institutions subject to the jurisdiction of the department in a manner and to an extent the commissioner considers appropriate;
 - (c) cause the appropriate supervisor to make a careful investigation and examination of the following:
 - (i) the character, reputation, and financial standing and ability of the organizers;
 - (ii) the character, financial responsibility, experience, and business qualifications of those proposed as officers;
 - (iii) the character and standing in the community of those proposed as directors, principal stockholders, or owners;
 - (iv) the need in the service area where the institution would be located, giving particular consideration to the adequacy of existing financial facilities and the effect the proposed institution would have on existing institutions in the area;
 - (v) the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds; and
 - (vi) other facts and circumstances bearing on the proposed institution that the supervisor considers relevant.
- (4)
 - (a) The supervisor shall submit findings and recommendations in writing to the commissioner.
 - (b) The application, any additional information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the department's office, except those portions of the application or report the commissioner declares to be confidential, pursuant to the applicant's request, in order to prevent a clearly unwarranted invasion of privacy.

- (5)
 - (a) If a hearing is held, the applicant shall publish notice of the hearing at the applicant's expense:
 - (i) in a newspaper of general circulation within the county where the proposed institution is to be located at least once a week for three successive weeks before the date of hearing; and
 - (ii) as required in Section 45-1-101 for three weeks before the date of the hearing.
 - (b) The notice shall include the date, time, and place of the hearing and any other information required by the commissioner.
 - (c) The commissioner shall act on the record before him within 30 days after receipt of the transcript of the hearing.
- (6) If no hearing is held, the commissioner may, within 90 days of acceptance of the application as complete, approve or disapprove the application based on the papers filed with him, together with the supervisor's findings and recommendations.
- (7)
 - (a) The commissioner may not approve the application unless the commissioner finds that the applicant has established by the preponderance of the evidence that:
 - (i) in light of the need for financial services in the area, the adequacy of existing facilities, and the effect the proposed institution would have on existing institutions in the area, the public need and convenience will be promoted by the establishment of the proposed institution;
 - (ii) in light of the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds, conditions in the service area in which the proposed institution would transact business afford reasonable promise of a successful operation;
 - (iii) the institution is being formed only for legitimate purposes allowed by the laws of this state;
 - (iv) the proposed capital equals or exceeds the required minimum and is adequate in light of current and prospective conditions;
 - (v) if the applicant is seeking authority to accept deposits, the deposits will be insured or guaranteed by an agency of the federal government;
 - (vi) the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation;
 - (vii) the name of the proposed financial institution does not resemble the name of any other institution transacting business in this state so closely as to cause confusion;
 - (viii) the applicants have complied with all of the provisions of law; and
 - (ix) no properly managed and soundly operated existing institutions offering substantially similar services in the service area to which the application relates will be unduly injured by approval of the application.
 - (b) The commissioner may condition approval of the application on the institution's acceptance of requirements or conditions with respect to insurance that the commissioner considers necessary to protect depositors.
- (8)
 - (a) The commissioner shall provide written findings and conclusions on the application.
 - (b) Upon approving an application, the commissioner shall:
 - (i) endorse the approval on the articles of incorporation;
 - (ii) file one copy with the Division of Corporations and Commercial Code;
 - (iii) retain one file copy; and
 - (iv) return one copy to the applicant within 10 days after the date of the commissioner's decision approving the application.

- (c) Upon disapproving an application, the commissioner shall mail notice of the disapproval to the applicant within 10 days.
 - (d) The commissioner may approve an application subject to conditions the commissioner considers appropriate to protect the public interest and carry out the purposes of this title.
 - (e) The commissioner shall give written notice of the decision to all persons who have filed a protest to the application.
- (9) Upon approval of an application for authorization to conduct a business subject to the jurisdiction of the department, the commissioner shall issue a license, permit, or other appropriate certificate of authority if:
- (a) except in the case of credit unions, all of the capital of the institution being formed has been paid in; and
 - (b) all the conditions and other requirements for approval of the application have been met.
- (10)
- (a) Any approval by the commissioner of an application under this section is considered revoked unless the business is open and operating within one year from the date of the approval.
 - (b) The commissioner, on written application made before the expiration of that period, and for good cause shown, may extend the date for activation for additional periods not to exceed six months each.
- (11) No person may obtain, for the purpose of resale, a certificate of approval to operate any institution under the jurisdiction of the department.
- (12) The commissioner may approve an application without any notice to other financial institutions to respond to an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution if the commissioner makes the findings required by Subsection (7).

Amended by Chapter 388, 2009 General Session

7-1-705 Approval required for certain transactions -- Application -- Grounds for disapproval.

- (1) Except as provided in Subsection (5), an applicant for authorization to engage in any of the transactions described in Sections 7-1-702 and 7-1-703 shall file with the commissioner:
- (a) an application in a form prescribed by the commissioner;
 - (b) the fee prescribed for the transaction by the commissioner;
 - (c) other information that is required by rule, or that the commissioner considers necessary to make the findings required by Subsection (3); and
 - (d) if the applicant is not a Utah resident, a Utah corporation, or an out-of-state corporation qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed action.
- (2)
- (a) Within 60 days of acceptance of the application as complete, the commissioner shall respond to the application by writing the commissioner's findings of fact, conclusions, and order.
 - (b) The commissioner may approve an application subject to the terms and conditions the commissioner considers necessary to protect the public interest and carry out the purposes of this title.
 - (c) The commissioner may defer acceptance of the application as complete until the applicant has provided any information the commissioner considers necessary to decide whether to approve or deny the application.
- (3) The commissioner may disapprove any application filed under this section if the commissioner finds that:

- (a) the proposed transaction would be detrimental to the safety and soundness of the applicant, to any institution that is a party to the transaction, or to a subsidiary or affiliate of that institution;
 - (b) the applicant, its executive officers, directors, or principal stockholders have not established a record of sound performance, efficient management, financial responsibility, and integrity so that it would be against the interest of the depositors, other customers, creditors, or shareholders of an institution, or the public to authorize the proposed transaction;
 - (c) the financial condition of the applicant or any other institution that is a participant in the proposed transaction might jeopardize the financial stability of the applicant or other institution, or prejudice the interests of depositors or other customers of the applicant or other institutions;
 - (d) the consummation of the proposed transaction will tend to substantially lessen competition, unless the commissioner finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market area to be served;
 - (e) the applicant has not established a record of meeting the credit needs of the communities that it or its subsidiary depository institution serves; or
 - (f) in the case of an interstate transaction, the applicant fails to obtain any required approval from a federal or state agency with regulatory authority over any of the institutions participating in the transaction.
- (4) In the case of an interstate transaction, the commissioner may accept an application in the form and manner prescribed by the state or federal agency that primarily regulates the applicant, supplemented as necessary to enable the commissioner to decide whether to approve or deny the application.
- (5)
- (a) The following branching activities, if they do not involve a merger or acquisition, are not subject to the requirements of this section, but are subject to Section 7-1-708:
 - (i) the establishment of a branch in Utah or another state by an out-of-state depository institution with a previously established branch in Utah; and
 - (ii) the establishment of a branch in another state by a Utah depository institution.
 - (b) Other interstate branching activities are subject to the requirements of both this section and Section 7-1-708.

Amended by Chapter 49, 1995 General Session

7-1-706 Application to commissioner to exercise power -- Procedure.

- (1) Except as provided in Sections 7-1-704 and 7-1-705, by filing a request for agency action with the commissioner, any person may request the commissioner to:
- (a) issue any rule or order;
 - (b) exercise any powers granted to the commissioner under this title; or
 - (c) act on any matter that is subject to the approval of the commissioner.
- (2) Within 10 days of receipt of the request, the commissioner shall, at the applicant's expense, cause a supervisor to make a careful investigation of the facts relevant or material to the request.
- (3)
- (a) The supervisor shall submit written findings and recommendations to the commissioner.
 - (b) The application, any additional information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the office of the

commissioner, except those portions of the application or report that the commissioner designates as confidential to prevent a clearly unwarranted invasion of privacy.

- (4)
 - (a) If a hearing is held concerning the request, the commissioner shall publish notice of the hearing at the applicant's expense:
 - (i) in a newspaper of general circulation within the county where the applicant is located at least once a week for three successive weeks before the date of the hearing; and
 - (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks before the date of the hearing.
 - (b) The notice required by Subsection (4)(a) shall include the information required by the department's rules.
 - (c) The commissioner shall act upon the request within 30 days after the close of the hearing, based on the record before the commissioner.
- (5)
 - (a) If no hearing is held, the commissioner shall approve or disapprove the request within 90 days of receipt of the request based on:
 - (i) the application;
 - (ii) additional information filed with the commissioner; and
 - (iii) the findings and recommendations of the supervisor.
 - (b) The commissioner shall act on the request by issuing findings of fact, conclusions, and an order, and shall mail a copy of each to:
 - (i) the applicant;
 - (ii) all persons who have filed protests to the granting of the application; and
 - (iii) other persons that the commissioner considers should receive copies.
- (6) The commissioner may impose any conditions or limitations on the approval or disapproval of a request that the commissioner considers proper to:
 - (a) protect the interest of creditors, depositors, and other customers of an institution;
 - (b) protect its shareholders or members; and
 - (c) carry out the purposes of this title.

Amended by Chapter 90, 2010 General Session

7-1-708 Establishing branches and relocating offices -- Application and procedure for approval -- Nonexempt credit unions.

- (1) A Utah depository institution or an out-of-state depository institution with a Utah branch or seeking to acquire a branch in this state may establish one or more branches, or relocate a branch office or its main office in this state, subject to the prior approval of the commissioner.
- (2) The approval of the commissioner required by Subsection (1) may be obtained by:
 - (a) filing an application with the department in a form the commissioner prescribes; and
 - (b) supplementing the application with information the commissioner considers material to determining whether to approve the application.
- (3)
 - (a) The commissioner shall approve or disapprove an application within 30 days after accepting the application as complete.
 - (b) If the commissioner does not approve or disapprove an application within the time stated in Subsection (3)(a), the application is considered approved.
- (4)

- (a) The commissioner shall cause a supervisor to make an investigation of the facts relevant or material to an application.
- (b) The supervisor that conducts the investigation required by Subsection (4)(a) shall submit written findings and recommendations to the commissioner.
- (5) An application, any supplemental information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the department's office, except those portions of the application the commissioner declares to be confidential to prevent a clearly unwarranted invasion of privacy, pursuant to the applicant's request.
- (6) To protect the safety and soundness of the applicant, the commissioner may:
 - (a) approve an application subject to the terms and conditions the commissioner considers necessary; or
 - (b) disapprove an application.
- (7)
 - (a) The commissioner's approval of any application under this section is considered revoked, unless the office is opened and operating within one year of the date approved by the commissioner for commencement of operations.
 - (b) The commissioner may extend the date for activation for up to two additional periods of not more than six months each:
 - (i) upon written application made before the expiration of a period; and
 - (ii) for good cause shown.
- (8) An out-of-state depository institution with a branch in Utah is not subject to the requirements of this section if the office or branch to be established or relocated is located outside of Utah.
- (9)
 - (a) For purposes of determining whether a nonexempt credit union may establish a branch, a nonexempt credit union is considered to be establishing a branch if the nonexempt credit union establishes:
 - (i) notwithstanding Section 7-1-103, a loan production office; or
 - (ii) any other office or facility that:
 - (A) is owned or operated by:
 - (I) the nonexempt credit union; or
 - (II) a credit union service organization in which the nonexempt credit union holds an ownership interest;
 - (B) is open to the public; and
 - (C) provides any product or service of the nonexempt credit union to a member of the nonexempt credit union.
 - (b) This section may not be interpreted as authorizing a loan production office to engage in any activity that a loan production office is not authorized to engage in under Section 7-1-715.

Amended by Chapter 327, 2003 General Session

7-1-709 Branches -- Discontinuance of operation.

- (1) A Utah depository institution or out-of-state depository institution authorized to do business in this state may discontinue operation of a branch upon resolution of its board of directors.
- (2) Upon adopting the resolution, the institution shall file an application with the commissioner specifying:
 - (a) the location of the branch to be discontinued;
 - (b) the date of the proposed discontinuance;
 - (c) the reasons for closing the branch; and

- (d) the extent to which the public need and convenience or service to members would still be adequately met.
- (3)
 - (a) Upon filing its application with the commissioner, the institution shall publish notice of the discontinuance:
 - (i) in a newspaper serving the area once a week for two consecutive weeks; and
 - (ii) as required by Section 45-1-101 for two weeks.
 - (b) The commissioner may approve the application after a reasonable comment period following publication.
- (4) An out-of-state depository institution with a branch in Utah is not subject to the requirements of this section if the branch to be closed is located outside of Utah.

Amended by Chapter 388, 2009 General Session

7-1-710 "Agency" defined -- Purposes and establishment of agency.

- (1) As used in this section, "agency" means a place, person, or facility, stationary or mobile, other than the home office or a branch office:
 - (a) where functions of the financial institution not involving the receiving or paying of deposits, making of loans or the handling of cash may be performed;
 - (b) established for individual transactions and for special temporary purposes;
 - (c) established for the purposes set forth in Sections 7-1-608 and 7-1-609; or
 - (d) established to perform the functions of a financial institution service corporation.
- (2) A financial institution may establish one or more agencies without the prior written approval of the commissioner. Within 30 days of the establishment of an agency, the financial institution shall inform the commissioner in writing of the address of the agency and the specific functions for which it was established.
- (3) No agency may be converted to a branch without compliance with Section 7-1-708.

Amended by Chapter 189, 2014 General Session

7-1-711 Mobile facilities -- Approval required for operation.

No financial institution may operate a mobile facility in this state at which deposits are received, checks paid, or money lent without the prior written approval of the commissioner.

Amended by Chapter 133, 1991 General Session

7-1-712 Acquisition of office of another financial institution.

Any financial institution authorized to do business in this state may acquire an office of any other financial institution located in this state upon obtaining the prior written approval of the commissioner in the manner provided in Section 7-1-708 for the establishment of a branch.

Amended by Chapter 1, 1986 General Session

7-1-713 Conversion of financial institution -- Approval required -- Procedure -- Federal-state conversion.

- (1) Any financial institution authorized to do business as a particular class of financial institution under any chapter of this title may convert to an institution authorized to do business under

another chapter by applying to the department for approval in the manner provided in Section 7-1-706.

- (2) If the commissioner approves the conversion, the institution shall immediately surrender its former charter to the commissioner. Under its new charter as a financial institution of a different class, it is entitled to all the benefits and powers conferred under the applicable chapter to other financial institutions of that class and is subject to examination, supervision, and regulation to the same extent as all other financial institutions of that class.
- (3) Any depository institution organized under the laws of this state may convert to a depository institution organized under the laws of the United States upon compliance with the laws of the United States and upon surrender of its charter to the commissioner.
- (4) Any depository institution organized under the laws of the United States or any other state that is authorized to do business in this state may convert into a depository institution subject to the jurisdiction of the department by applying to the department for approval in the manner provided in Section 7-1-706.

Amended by Chapter 200, 1994 General Session

7-1-714 Judicial review of acts of commissioner -- Hearing by court.

- (1) Any person aggrieved by any rule, regulation, order, decision, or ruling or other act or failure to act of the commissioner under this title is entitled to judicial review.
- (2) Judicial review of other agency actions shall be governed by the procedures and requirements of this subsection.
 - (a) Within 30 days after receipt of notice of a rule, order, or other decision or ruling not arising from an adjudicative proceeding, or within 120 days after the commissioner has failed to act upon a request or application, the aggrieved person may file an application for judicial review with a court of competent jurisdiction in the county in which the applicant is located, or in the county where the office of the commissioner is located, and may request an immediate hearing on the act or failure to act.
 - (b) The court shall require adequate notice to be served on the commissioner and all other interested parties and shall give the petition for review precedence on its calendar.
 - (c) The court shall review the record before the commissioner and shall adjudicate the question, enter appropriate orders, and enforce them.
 - (d) The court may declare void any rule, regulation, order, decision, ruling, or other act of the commissioner it finds to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.
- (3) Any action for judicial review of acts or failure to act of the commissioner shall be heard by the court and shall be based on the record made before the department.

Amended by Chapter 161, 1987 General Session

7-1-715 Loan production offices -- Application and procedure for approval.

- (1) With the prior approval of the commissioner, a depository institution may establish one or more loan production offices.
- (2) A loan production office shall be staffed and accessible to the public.
- (3) A loan production office may:
 - (a) solicit loans on behalf of its depository institution;
 - (b) assemble credit information;
 - (c) make property inspections and appraisals;

- (d) secure title information;
 - (e) prepare applications for loans;
 - (f) solicit investors to purchase loans from the depository institution;
 - (g) seek to have these investors contract with a depository institution for servicing the loans; and
 - (h) engage in other activities in the nature of acting as an agent for the parent depository institution in facilitating the production of loans.
- (4) A loan production office may not do any of the following:
- (a) accept deposits;
 - (b) originate deposit, savings, or share accounts;
 - (c) pay checks;
 - (d) approve loans; or
 - (e) disburse loan funds.
- (5) A loan processed by a loan production office may only be approved at the main office or approved branch of the depository institution, except a loan production office may make a recommendation, subject to independent analysis and approval by the depository institution.
- (6) Funds from a loan processed by a loan production office may only be disbursed at the main office or approved branch of the depository institution, or at the office of an independent third party, such as a title company or escrow agent.
- (7) Although a loan production office is not considered a branch, the establishment of a loan production office is subject to the prior approval of the commissioner in the manner provided in Section 7-1-708 for the establishment of a branch office.
- (8) Each depository institution with operating loan production offices in Utah as of June 1, 1994, shall file an initial registration with the department stating the location of each loan production office on or before July 15, 1994. All subsequent applications for a loan production office require prior approval of the commissioner.
- (9) If the commissioner determines that it is in the public interest, the department may examine the books and records of the office at the per diem charge established in Section 7-1-401.

Amended by Chapter 49, 1995 General Session

7-1-716 Affiliate depository institutions acting as agents -- Notification required.

- (1) Any depository institution may, at its main office or at any branch, act as an agent of any other depository institution that is a subsidiary of the same depository institution holding company in conducting the activities authorized under this section.
- (2) This section applies regardless of whether the affiliate depository institutions have the same home state.
- (3) A depository institution acting as agent for an affiliate depository institution may:
- (a) receive deposits;
 - (b) renew time deposits;
 - (c) engage in the activities authorized for a loan production office under Section 7-1-715;
 - (d) service loans; and
 - (e) receive payments on loans and other obligations.
- (4) A depository institution may not do any of the following as an agent on behalf of an affiliate depository institution:
- (a) open or originate deposit, savings, or share accounts;
 - (b) evaluate or approve loans;
 - (c) disburse loan funds; or

- (d) conduct any activity as an agent that it is prohibited from conducting as a principal under any applicable law.
- (5) A depository institution acting as a principal may not have an affiliate depository institution act as its agent in conducting any activity that:
 - (a) the principal depository institution is prohibited from conducting; or
 - (b) the agent depository institution would be prohibited from conducting as a principal.
- (6) An agency relationship between affiliates under this section shall be consistent with safe and sound practices and shall comply with all applicable law.
- (7) A depository institution acting as an agent is not considered to be a branch of the affiliate solely because of activities conducted under this section.

Enacted by Chapter 49, 1995 General Session

Part 8 Miscellaneous

7-1-801 False statement derogatory to financial condition of depository institution a misdemeanor -- Exemptions.

- (1) Any person who willfully and knowingly makes or circulates or transmits to another any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or standing of any depository institution, or who knowingly counsels, aids, procures, or induces another to state, transmit, or circulate any such statement or rumor, is guilty of a class B misdemeanor.
- (2) Subsection (1) does not apply to the exchange of information between personnel of the department and the personnel of other regulatory and deposit insurance agencies in the discharge of regulatory duties, which communications are considered absolutely privileged.

Amended by Chapter 200, 1994 General Session

7-1-802 Confidentiality of information received by department -- Availability of information.

- (1) The commissioner shall receive and place on file in the department's office all reports required by law and shall certify all reports required to be published.
- (2) Except as provided in this section, the following are confidential, not public records, and not open to public inspection:
 - (a) all reports received or prepared by the department;
 - (b) all information obtained from an institution or person under the jurisdiction of the department; and
 - (c) all orders and related records of the department.
- (3) The following records and information are public and are open to public inspection:
 - (a) reports of condition required by Section 7-1-318;
 - (b) information that is otherwise generally available to the public; and
 - (c) information contained in, and final decisions on, an application filed under Sections 7-1-702, 7-1-703, 7-1-704, 7-1-705, 7-1-706, 7-1-708, 7-1-709, 7-1-712, 7-1-713, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, excluding:
 - (i) proprietary information, business plans, and personal financial information; and
 - (ii) information for which:

- (A) the applicant requests confidentiality; and
 - (B) the commissioner grants the request for confidentiality.
- (4) The department may disclose records and information that are not public to the following:
- (a) to an agency or authority:
 - (i) that regulates:
 - (A) the subject of the record; or
 - (B) an affiliate of the subject of the record, as defined by the commissioner by rule; and
 - (ii) is of:
 - (A) the federal government;
 - (B) the state; or
 - (C) another state;
 - (b) to a federal deposit insurance agency;
 - (c) to an official legally authorized to investigate criminal charges in connection with the affairs of the subject of the record, and to any tribunal conducting legal proceedings resulting from such an investigation;
 - (d) to a person preparing a proposal for merging or acquiring an institution under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, but only after the department provides notice of the disclosure to the institution;
 - (e) to any other person, if the commissioner determines, after notice to the institution or person that is the subject of the record and opportunity for hearing, that the interests favoring disclosure of the information outweigh the interests favoring confidentiality of the information; and
 - (f) to any court in a proceeding under:
 - (i) Sections 7-1-304, 7-1-320, 7-1-322; or
 - (ii) a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (5) The commissioner may limit the use and further disclosure of any information disclosed under Subsection (4):
- (a) to protect the business confidentiality interest of the subject of the record; and
 - (b) to protect the public interest, such as to avoid:
 - (i) a liquidity crisis in a depository institution; or
 - (ii) undue speculation in securities or currency markets.
- (6) The department shall disclose information in the manner and to the extent directed by a court order signed by a judge from a court of competent jurisdiction if:
- (a) the disclosure does not violate applicable federal or state law;
 - (b) the information to be disclosed deals with a matter in controversy over which the court has jurisdiction;
 - (c) the person requesting the order has provided reasonable prior written notice to the commissioner;
 - (d) the court has considered the merits of the request for disclosure and has determined that the interests favoring disclosure of the information outweigh the interests favoring confidentiality of the information; and
 - (e) the court has appropriately limited the use and further disclosure of the information:
 - (i) to protect the business confidentiality interest of the subject of the record; and
 - (ii) to protect the public interest, such as to avoid:
 - (A) a liquidity crisis in a depository institution; or

(B) undue speculation in securities or currency markets.

(7) Notwithstanding the other provisions of this section, the commissioner may provide information from a report of an examination performed by the commissioner of the condition and affairs of a technology service provider to a depository institution serviced by the technology service provider.

Amended by Chapter 288, 2016 General Session

7-1-803 Conflicting interests of commissioner, supervisors, and examiners -- Loans and accounts -- Disclosure -- Penalty.

- (1) Neither the commissioner nor any supervisor or examiner may do any of the following with respect to any institution under the supervision of the department:
- (a) be indebted, directly or indirectly, as a borrower, accommodation endorser, surety, or guarantor to an institution, or to an individual or any other legal or commercial entity owning or controlling an institution;
 - (b) be an officer, director, or employee of any institution or of an individual or any other legal or commercial entity owning or controlling an institution;
 - (c) own or deal in, directly or indirectly, the shares or obligations of an institution or of a corporation owning or controlling an institution;
 - (d) receive, directly or indirectly, from an institution or any officer, director, or employee of an institution, any salary, fee, or compensation; or
 - (e) be interested in or engage in the negotiations of any loan to, obligation of, or accommodation for another person to or with an institution.
- (2) Notwithstanding Subsection (1), the commissioner, any supervisor, or any examiner of the department may:
- (a) have and maintain savings, transaction, share, time deposit, or other accounts, or certificates and deposits in any financial or depository institution in the state, or be a lessee of a safe deposit box on the same terms and conditions available to the public generally;
 - (b) be indebted to a depository institution under the supervision of the department on terms offered to the public generally upon:
 - (i) a mortgage loan upon the mortgagor's own home;
 - (ii) an open or closed end consumer loan granted before the person became employed with the department or before the institution became subject to the jurisdiction of the department;
 - (iii) in the case of a supervisor or examiner, a consumer loan lawfully made prior to January 1, 1991, provided that while the debt is subject to the provisions of this chapter, the terms of the debt are not changed in favor of the debtor in a manner not offered and provided to other creditworthy borrowers or waived or extended as a result of delinquency or default; and
 - (iv) a debt fully secured at all times by deposits in the institution;
 - (c) be indebted on an installment debt transferred to an institution under the jurisdiction of the department in the regular course of business by a seller of consumer goods; and
 - (d) continue to receive payments under a regularly established pension plan of general application for fully retired employees of an institution under the supervision of the department.
- (3) Full disclosure in writing of any indebtedness incurred under Subsection (2) shall be filed in the commissioner's office.
- (4) Any person who knowingly violates this section with the intention of getting gain through the influence of his office shall forfeit the office or employment and is guilty of a third degree felony.

Amended by Chapter 200, 1994 General Session

7-1-806 Money market funds arranging with bank to honor two-party instruments -- Discouraging payment of interest to two persons on funds in transit -- Pyramiding and similar schemes as misdemeanors.

Nothing in this act shall be construed to prevent money market funds from making arrangements with banks to honor two party checks, drafts, or other instruments.

The commissioner shall exert his influence to discourage banks, money market funds and other programs in Utah and throughout the United States from paying interest to two persons at the same time on funds in the process of transfer.

The process or the practice referred to as pyramiding or any similar process or practice as defined by the commissioner, and such definition is approved by the governor, shall be prohibited within this state and persons found guilty of these schemes shall be found guilty of a class C misdemeanor. This does not preclude more serious punishment under federal law.

Money market funds, similar funds and bank regulated institutions shall cooperate with the commissioner to stop these practices.

Amended by Chapter 378, 2010 General Session

7-1-807 Printed checks, drafts and orders -- Requirements -- Violation as misdemeanor.

Every check, draft, order, or other like instrument printed for a customer of any institution issuing transaction accounts in the state as part of a series after the effective date of this act shall have on its face the name and address of the account holder, the month and year the account was opened, and the number of the check, draft, order, or other like instrument in unbroken, sequential, numerical order, beginning with the number 101, except for initial deposits to open a new account or in case of lost or stolen checks when a limited supply of unnumbered counterchecks may be issued. Any person who violates this section is guilty of a class C misdemeanor.

Enacted by Chapter 56, 1983 General Session

7-1-808 Closing days for depository institutions.

(1) Depository institutions shall be closed to the general public on Sundays.

(2)

(a) The commissioner may designate any additional or different day on which depository institutions are closed to the general public, such as in the event of:

(i) an emergency;

(ii) disaster;

(iii) flood;

(iv) earthquake;

(v) fire;

(vi) power outage;

(vii) heavy snow;

(viii) other impediment to:

(A) business; or

(B) the safety of customers and employees; or

(ix) any circumstance in which closing on an additional or different day serves the public interest.

- (b) The commissioner may designate a day under Subsection (2)(a) as applying to all or any portion of the state.
- (3)
 - (a) A depository institution may elect to be open or closed to the general public during business hours of its choosing on any day not designated under this section as a day for closing.
 - (b) A depository institution shall provide adequate notice to its customers or members of any change from normal business hours.

Amended by Chapter 260, 2000 General Session

7-1-809 Articles of incorporation -- Amended or restated articles of incorporation -- Prerequisites to filing.

- (1) The Division of Corporations and Commercial Code may not file articles of incorporation that state that the purpose of the corporation is to transact business as a depository institution or to hold a corporation that will transact business as a depository institution until the department certifies that it has reviewed and does not object to the articles of incorporation.
- (2) A corporation whose articles of incorporation have been filed with the Division of Corporations and Commercial Code pursuant to Subsection (1) may not transact business as a depository institution without authorization from the department in accordance with Section 7-1-705.
- (3) The Division of Corporations and Commercial Code may not file articles of amendment or articles of restatement of a depository institution or depository institution holding company until the department has certified that it has reviewed and does not object to the articles of amendment or articles of restatement.

Enacted by Chapter 182, 1996 General Session

7-1-810 Limited liability companies.

- (1) Notwithstanding any other provision of this title and subject to Subsection (8), if the conditions of this section are met, the following may be organized as or convert to a limited liability company under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act:
 - (a) an industrial bank chartered under Chapter 8, Industrial Banks;
 - (b) an industrial loan company as defined in Section 7-8-21; or
 - (c) any of the following if the institution is an S Corporation, as defined in Section 1361, Internal Revenue Code, immediately before becoming a limited liability company:
 - (i) a bank chartered under Chapter 3, Banks; or
 - (ii) a depository institution holding company.
- (2)
 - (a) Before an institution described in Subsection (1) may organize as or convert to a limited liability company, the institution shall obtain approval of the commissioner.
 - (b)
 - (i) To obtain the approval under this section from the commissioner, the institution shall file a request for approval with the commissioner at least 30 days before the day on which the institution becomes a limited liability company.
 - (ii) If the commissioner does not disapprove the request for approval within 30 days from the day on which the commissioner receives the request, the request is considered approved.
 - (iii) When taking action on a request for approval filed under this section, the commissioner may:
 - (A) approve the request;

- (B) approve the request subject to terms and conditions the commissioner considers necessary; or
 - (C) disapprove the request.
- (3) To approve a request for approval, the commissioner shall find:
- (a) for an institution described in Subsection (1) that is required to be insured by a federal deposit insurance agency, that the institution:
 - (i) will operate in a safe and sound manner;
 - (ii) has the following characteristics:
 - (A) the institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;
 - (B) the exclusive authority to manage the institution is vested in a board of managers or directors that:
 - (I) is elected or appointed by the owners;
 - (II) is not required to have owners of the institution included on the board;
 - (III) possesses adequate independence and authority to supervise the operation of the institution; and
 - (IV) operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;
 - (C) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and
 - (D)
 - (I) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights; and
 - (II) the institution is able to obtain new investment funding if needed to maintain adequate capital; and
 - (iii) is able to comply with all legal and regulatory requirements for an insured depository institution under applicable federal and state law; and
 - (b) for an institution described in Subsection (1) that is not required to be insured by a federal deposit insurance agency, that the institution will operate in a safe and sound manner.
 - (4) An institution described in Subsection (3)(a) that is organized as a limited liability company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it is authorized to conduct business under this title as a limited liability company.
 - (5)
 - (a) All rights, privileges, powers, duties, and obligations of an institution described in Subsection (1) that is organized as a limited liability company and its members and managers shall be governed by Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, except:
 - (i) the following do not apply to an institution that is described in Subsection (3)(a):
 - (A) Section 48-3a-111;
 - (B) Section 48-3a-113;
 - (C) Section 48-3a-201;
 - (D) Section 48-3a-401;
 - (E) Subsections 48-3a-407(1) and (3)(c);
 - (F) Section 48-3a-410;
 - (G) Subsection 48-3a-502(1)(c);

- (H) Title 48, Chapter 3a, Part 6, Dissociation;
- (I) Section 48-3a-701; and
- (J) Title 48, Chapter 3a, Part 9, Foreign Limited Liability Companies; and
- (ii) as otherwise provided in this title.
- (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection (3)(a):
 - (i) for purposes of transferring a member's interests in the institution, a member's interest in the institution shall be treated like a share of stock in a corporation; and
 - (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to another person, the person who receives the member's interest shall obtain the member's entire rights associated with the member's interest in the institution including:
 - (A) all economic rights; and
 - (B) all voting rights.
- (c) An institution described in Subsection (3)(a) may not by agreement or otherwise change the application of Subsection (5)(a) to the institution.
- (6) Unless the context requires otherwise, for the purpose of applying this title to an institution described in Subsection (1) that is organized as a limited liability company:
 - (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act, includes the equivalent citation to Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act;
 - (b) "articles of incorporation" includes a limited liability company's certificate of organization as that term is used in Section 48-3a-201;
 - (c) "board of directors" includes one or more persons who have, with respect to an institution described in Subsection (1), authority substantially similar to that of a board of directors of a corporation;
 - (d) "bylaws" includes a limited liability company's operating agreement as that term is defined in Section 48-3a-201;
 - (e) "corporation" includes a limited liability company organized under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act;
 - (f) "director" includes any of the following of a limited liability company:
 - (i) a manager;
 - (ii) a director; or
 - (iii) other person who has with respect to the institution described in Subsection (1), authority substantially similar to that of a director of a corporation;
 - (g) "dividend" includes distributions made by a limited liability company under Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company;
 - (h) "incorporator" includes an organizer of a limited liability company as provided in Title 48, Chapter 3a, Part 2, Formation -- Certificate of Organization and Other Filings;
 - (i) "officer" includes any of the following of an institution described in Subsection (1):
 - (i) an officer; or
 - (ii) other person who has with respect to the institution described in Subsection (1) authority substantially similar to that of an officer of a corporation;
 - (j) "security," "shares," or "stock" of a corporation includes:
 - (i) a membership interest in a limited liability company as provided in Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company; and
 - (ii) a certificate or other evidence of an ownership interest in a limited liability company; and
 - (k) "shareholder" or "stockholder" includes an owner of an interest in an institution described in Subsection (1) including a member as provided in Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company.

- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall make rules governing the form of a request for approval filed under this section.
- (8) A depository institution organized under the laws of this state may not be organized as or converted to a series of transferable interests in a limited liability company as provided in Title 48, Chapter 3a, Part 12, Series Limited Liability Companies.

Amended by Chapter 281, 2018 General Session

Part 9 Depository Institution Insurance Powers

7-1-901 Authorized insurance activities of depository institutions.

- (1) A depository institution authorized to do business in this state under this title may directly, or indirectly through a subsidiary or affiliate, engage in the following insurance activities:
 - (a) engage in the insurance business as defined under Section 31A-1-301 except as may be limited by federal law;
 - (b) act as an insurance producer or consultant as defined under Section 31A-1-301; or
 - (c) engage in insurance adjusting as defined in Section 31A-26-102.
- (2) A depository institution, subsidiary, or affiliate, that engages in insurance activities authorized under Subsection (1) shall be subject to Title 31A, Insurance Code.

Amended by Chapter 298, 2003 General Session

Part 10 Financial Information Privacy

7-1-1001 Definitions -- Written consent or court order for disclosure by financial institution -- Exception.

- (1) As used in this part:
 - (a) "Account holder" means a person for whom an account is held by a financial institution.
 - (b) "Governmental entity" means:
 - (i) the state, including:
 - (A) a department;
 - (B) an institution;
 - (C) a board;
 - (D) a division;
 - (E) a bureau;
 - (F) an office;
 - (G) a commission;
 - (H) a committee; or
 - (I) an elected official; and
 - (ii) a political subdivision of the state, including:
 - (A) a county;
 - (B) a city;

- (C) a town;
 - (D) a school district;
 - (E) a public transit district;
 - (F) a redevelopment agency;
 - (G) a special improvement district; or
 - (H) a taxing district.
- (c) "Nonprotected record" means a record maintained by a financial institution to facilitate the conduct of the financial institution's business regarding a person or account, including:
- (i) the existence of an account;
 - (ii) the opening and closing dates of an account;
 - (iii) the name under which an account is held; and
 - (iv) the name, address, and telephone number of an account holder.
- (d) "Protected record" means a record that is not defined as a nonprotected record.
- (e) "Record" means information that is:
- (i) prepared, owned, received, or retained by a financial institution;
 - (ii)
 - (A) inscribed on a tangible medium; or
 - (B) stored in an electronic or other medium; and
 - (iii) retrievable in perceivable form.
- (2) Except for a governmental entity listed in Subsection 7-1-1006(1), an individual acting on behalf of a governmental entity may not request, obtain by subpoena, or otherwise obtain information from a state or federally chartered financial institution that constitutes a record reflecting the financial condition of any person without first obtaining:
- (a) written permission from all account holders of the account referenced in the record to be examined; or
 - (b) an order from a court of competent jurisdiction permitting access to the record.
- (3) This section does not apply to a review made by the commissioner to determine whether a financial institution is operating in accordance with law.

Amended by Chapter 381, 2009 General Session

7-1-1002 Notice to person about whom information sought.

- (1)
- (a) If a court order is obtained pursuant to Section 7-1-1001, the governmental entity that obtained the order shall notify the person about whom information is sought that a court order has been obtained:
 - (i) within three days of the day on which service of the order is made upon the financial institution; and
 - (ii) no later than seven days before the day fixed in the order as the day upon which the records are to be produced or examined.
 - (b) The notice required by Subsection (1)(a) shall be accompanied by:
 - (i) a copy of the order that has been served upon the financial institution;
 - (ii) a copy of the motion or application upon which the order is based; and
 - (iii) a statement setting forth the rights of the person under Section 7-1-1003.
- (2)
- (a) The notice shall be sufficient if, on or before the third day after issuance of the order, notice is:
 - (i) served in the manner provided in Rule 4 (d), Utah Rules of Civil Procedure, upon the person entitled to notice; or

- (ii) mailed by certified or registered mail to the last-known address of the person entitled to notice.
- (b) Notwithstanding Subsection (2)(a), if the person entitled to notice is deceased or under legal disability, notice shall be served upon or mailed to the last-known address of that person's executor, administrator, guardian, or other fiduciary.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1003 Intervention to challenge or stay order -- Burden on governmental entity.

- (1) Notwithstanding any other law or rule of law, any person who is entitled to notice of a court order under Section 7-1-1002 shall have the right to intervene in any proceeding with respect to enforcement of the order to:
 - (a) challenge the issuance of the order; or
 - (b) stay compliance with the order.
- (2) Upon intervention, the burden shall be on the governmental entity obtaining the order to show that there is reasonable cause for the issuance of the order.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1004 Reimbursement of financial institution for costs of obtaining information.

- (1) Except as provided in Subsection (2), a financial institution is entitled to reimbursement by a governmental entity seeking information, for costs reasonably and directly incurred in searching for, reproducing, or transporting a record required to be produced if the financial institution produces the record:
 - (a) pursuant to written permission by all account holders of the account referenced in the record in accordance with:
 - (i) Subsection 7-1-1001(2)(a); or
 - (ii) Subsection 7-1-1006(2)(b)(iii);
 - (b) in compliance with an order obtained under this part; or
 - (c) in compliance with an order of a court or administrative body of competent jurisdiction.
- (2) A depository institution is not allowed reimbursement under this section by the State Tax Commission for information the depository institution provides or action the depository institution takes in accordance with Title 59, Chapter 1, Part 17, Depository Institution Data Match System and Levy Act.
- (3) The commissioner shall by rule establish the rates and conditions under which a governmental entity shall reimburse a financial institution.

Amended by Chapter 326, 2016 General Session

7-1-1005 Admissibility of information restricted.

- (1) Information obtained directly or indirectly from a financial institution in violation of Sections 7-1-1001 through 7-1-1003 may not be admissible in any court of this state against the person entitled to notice.
- (2) This section does not apply in any action:
 - (a) between the financial institution and the person otherwise entitled to notice; or
 - (b) in which it is claimed that the financial institution has been the victim of fraud, embezzlement or any other criminal act committed by the person otherwise entitled to notice.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1006 Inapplicable to certain official investigations.

- (1) Sections 7-1-1002 and 7-1-1003 do not apply if an examination of a record is a part of an official investigation by:
 - (a) local police;
 - (b) a sheriff;
 - (c) a peace officer;
 - (d) a city attorney;
 - (e) a county attorney;
 - (f) a district attorney;
 - (g) the attorney general;
 - (h) the Department of Public Safety;
 - (i) the Office of Recovery Services of the Department of Human Services;
 - (j) the Insurance Department;
 - (k) the Department of Commerce;
 - (l) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the Department of Workforce Services;
 - (m) the state auditor;
 - (n) the State Tax Commission; or
 - (o) the Department of Health or its designee, when undertaking an official investigation to determine whether an individual qualifies for certain assistance programs as provided in Section 26-18-2.5.
- (2) Except for the Office of Recovery Services, if a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain the record as follows:
 - (a) if the record is a nonprotected record, by request in writing that:
 - (i) certifies that an official investigation is being conducted; and
 - (ii) is signed by a representative of the governmental entity that is conducting the official investigation; or
 - (b) if the record is a protected record, by obtaining:
 - (i) a subpoena authorized by statute;
 - (ii) other legal process:
 - (A) ordered by a court of competent jurisdiction; and
 - (B) served upon the financial institution; or
 - (iii) written permission from all account holders of the account referenced in the record to be examined.
- (3) If the Office of Recovery Services seeks a record, the Office of Recovery Services shall obtain the record pursuant to:
 - (a) Subsection 62A-11-104(1)(g);
 - (b) Section 62A-11-304.1;
 - (c) Section 62A-11-304.5; or
 - (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.
- (4) A financial institution may not give notice to an account holder or person named or referenced within the record disclosed pursuant to Subsection (2)(a).
- (5) In accordance with Section 7-1-1004, the governmental entity conducting the official investigation that obtains a record from a financial institution under this section shall reimburse the financial institution for costs reasonably and directly incurred by the financial institution.

Amended by Chapter 344, 2011 General Session

7-1-1007 Liability of financial institutions.

A financial institution is not liable to an account holder or person named or referenced within a record:

- (1) for a disclosure that is the result of a subpoena, order, or request made pursuant to Sections 7-1-1001 through 7-1-1006 if the financial institution reasonably believes that the subpoena, order, or request is properly made under Sections 7-1-1001 through 7-1-1006; or
- (2) for a disclosure or action taken in good faith pursuant to a data match or administrative subpoena provided for by a statute listed in Subsection 7-1-1006(3).

Amended by Chapter 381, 2009 General Session

Chapter 2
Possession of Depository Institution by Commissioner

7-2-1 Supervisory actions by commissioner -- Grounds -- Mergers or acquisitions authorized by commissioner -- Possession of business and property taken by commissioner.

- (1) An institution under the jurisdiction of the department is subject to supervisory actions by the commissioner under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, if the commissioner, with or without an administrative hearing, finds that:
 - (a) the institution is not in a safe and sound condition to transact its business;
 - (b) an officer of the institution or other person has refused to be examined or has made false statements under oath regarding its affairs;
 - (c) the institution or other person has violated its articles of incorporation or any law, rule, or regulation governing the institution or other person;
 - (d) the institution or other person is conducting its business in an unauthorized or unsafe manner, or is practicing deception upon its depositors, members, or the public, or is engaging in conduct injurious to its depositors, members, or the public;
 - (e) the institution or other person has been notified by its primary account insurer of the insurer's intention to initiate proceedings to terminate insurance;
 - (f) the institution or other person has failed to maintain a minimum amount of capital as required by the department, any state, or the relevant federal regulatory agency;
 - (g) the institution or other person is a depository institution that has failed or refused to pay its depositors in accordance with the terms under which the deposits were received, or has or is about to become insolvent;
 - (h) the institution or other person or its officers or directors have failed or refused to comply with the terms of a legally authorized order issued by the commissioner or by any federal authority or authority of another state having jurisdiction over the institution or other person;
 - (i) the institution or other person or its officers or directors have failed or refused, upon proper demand, to submit its records, books, papers, and affairs for inspection to the commissioner or to a supervisor or an examiner of the department;

- (j) the institution or other person or its officers or directors, after 30 days written notice, have failed to comply with or have continued to violate this title or any rule or regulation of the department issued under it;
 - (k) any person who controls the institution or other person subject to the jurisdiction of the department has used the control to cause the institution or other person to be or about to be in an unsafe or unsound condition, to conduct its business in an unauthorized or unsafe manner, or to violate this title or any rule or regulation of the department issued under it; or
 - (l) the remedies provided in Section 7-1-307, 7-1-308, or 7-1-313 are ineffective or impracticable to protect the interest of depositors, creditors, or members of the institution or other person, or to protect the interests of the public.
- (2) The commissioner may take any action described in Subsection (3) if:
- (a) he finds that:
 - (i) any of the conditions set forth in Subsection (1) exist with respect to an institution under the jurisdiction of the department; and
 - (ii) an order issued pursuant to Section 7-1-307, 7-1-308, or 7-1-313 would not adequately protect the interests of the institution's depositors, creditors, members, or other interested persons from all dangers presented by the conditions found to exist; or
 - (b) two-thirds of the voting shares of an institution under the jurisdiction of the department that are eligible to be voted at any regular or special meeting of the shareholders of the institution are voted at the meeting in favor of a resolution consenting to the commissioner taking or causing to be taken any of the actions described below.
- (3) After making the requisite findings or receiving the consenting vote of shareholders under Subsection (2), the commissioner may:
- (a) without taking possession of the institution, authorize, or by order require or give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of the institution or other person by any other institution or entity approved or designated by the commissioner in accordance with Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; or
 - (b) take possession of the institution or other person subject to the jurisdiction of the department with or without a court order if an acquisition of control of, a merger with, an acquisition of all or a portion of the assets of, or an assumption of all or a portion of the liabilities of the institution or other person without taking possession does not appear to the commissioner to be practicable.
- (4) Upon taking possession of an institution or the person, the commissioner is vested by operation of law with the title to and the right to possession of all assets, the business, and property of the institution or other person subject to court order made under Section 7-2-3. While in possession of an institution or other person, the commissioner or any receiver or liquidator appointed by him may exercise any or all of the rights, powers, and authorities granted to the commissioner under this chapter, or may give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of an institution or other person subject to the jurisdiction of the department, under the provisions of Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (5) An action of the commissioner under this section may only be enjoined or set aside upon a finding, after notice and hearing, that the action is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

Amended by Chapter 189, 2014 General Session

7-2-2 Jurisdiction of district court -- Supervision of actions of commissioner in possession -- Authority of commissioner and court.

- (1) The district court for the county in which the principal office of the institution or other person is situated has jurisdiction in the liquidation or reorganization of the institution or other person of which the commissioner has taken possession under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies. As used in this chapter, "court" means the court given jurisdiction by this provision.
- (2) Before taking possession of an institution or other person under his jurisdiction, or within a reasonable time after taking possession of an institution or other person without court order, as provided in this chapter, the commissioner shall cause to be commenced in the appropriate district court, an action to provide the court supervisory jurisdiction to review the actions of the commissioner.
- (3) The actions of the commissioner are subject to review of the court. The court has jurisdiction to hear all objections to the actions of the commissioner and may rule upon all motions and actions coming before it. Standing to seek review of any action of the commissioner or any receiver or liquidator appointed by him is limited to persons whose rights, claims, or interests in the institution would be adversely affected by the action.
- (4) The authority of the commissioner under this chapter is of an administrative and not judicial receivership. The court may not overrule a determination or decision of the commissioner if it is not arbitrary, capricious, fraudulent, or contrary to law. If the court overrules an action of the commissioner, the matter shall be remanded to the commissioner for a new determination by him, and the new determination shall be subject to court review.

Amended by Chapter 189, 2014 General Session

7-2-3 Action for injunction against commissioner in possession -- Procedure -- Appeal.

- (1)
 - (a) Whenever any institution or other person of which the commissioner has taken possession considers itself aggrieved by the taking, it may within 10 days after the taking apply to the court to enjoin further proceedings.
 - (b) After ordering the commissioner to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining the facts, the court may:
 - (i) dismiss the application; or
 - (ii) enjoin the commissioner from further proceedings if the court finds the taking to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.
 - (c) If the court enjoins further proceedings, it shall order the commissioner to surrender possession of the institution in a manner and on terms designated by the court in the public interest.
 - (d) Notice of any hearings shall be given to persons designated by the court in the manner designated by the court.
- (2) An appeal may be taken by the commissioner, a receiver, or liquidator appointed by the commissioner under Section 7-2-9, or by the institution from the judgment of the court as provided by law. An appeal from the judgment does not stay any judgment in favor of the commissioner, or a receiver or liquidator appointed by him. If the appeal is taken by the commissioner, or by a receiver or liquidator appointed by him, no bond is required. If the

appeal is taken by the institution, a bond is required as provided by the Utah Rules of Civil Procedure.

Amended by Chapter 200, 1994 General Session

7-2-4 Consent required for institution to resume business.

The institution or other person may resume business only with the consent of and upon conditions approved by the commissioner. The commissioner may give his consent to resumption of business if arrangements have been made by the institution or its stockholders, by reorganization or otherwise, to the satisfaction of the commissioner, to pay all creditors of the institution, aside from the stockholders, and to remedy the default or condition for which possession was taken and to pay the expenses of the proceeding.

Amended by Chapter 8, 1983 General Session

7-2-5 Appointment of receiver or assignment for creditors -- Notice required -- Commissioner taking possession.

No receiver may be appointed by any court and no deed or assignment for the benefit of creditors may be filed in any district court within this state for any institution or other person under the jurisdiction of the commissioner, except upon notice to the commissioner, unless because of urgent necessity the court determines that it is necessary to do so to preserve the assets of the institution. The commissioner may within five days after service of the notice upon him take possession of the institution, in which case no further proceedings shall be had upon the application for the appointment of a receiver or under the deed of assignment, or, if a receiver has been appointed or the assignee has entered upon the administration of his trust, the appointment shall be vacated or the assignee shall be removed upon application of the commissioner to the court by which the receiver was appointed or in which the assignment was filed, and the commissioner shall proceed to administer the assets of the institution as provided in this chapter.

Amended by Chapter 8, 1983 General Session

7-2-6 Possession by commissioner -- Notice -- Presentation, allowance, and disallowance of claims -- Objections to claims.

- (1)
 - (a) Possession of an institution by the commissioner commences when notice of taking possession is:
 - (i) posted in each office of the institution located in this state; or
 - (ii) delivered to a controlling person or officer of the institution.
 - (b) All notices, records, and other information regarding possession of an institution by the commissioner may be kept confidential, and all court records and proceedings relating to the commissioner's possession may be sealed from public access if:
 - (i) the commissioner finds it is in the best interests of the institution and its depositors not to notify the public of the possession by the commissioner;
 - (ii) the deposit and withdrawal of funds and payment to creditors of the institution is not suspended, restricted, or interrupted; and
 - (iii) the court approves.
- (2)
 - (a)

- (i) Within 15 days after taking possession of an institution or other person under the jurisdiction of the department, the commissioner shall publish a notice to all persons who may have claims against the institution or other person to file proof of their claims with the commissioner before a date specified in the notice.
- (ii) The filing date shall be at least 90 days after the date of the first publication of the notice.
- (iii) The notice shall be published:
 - (A)
 - (I) in a newspaper of general circulation in each city or county in which the institution or other person, or any subsidiary or service corporation of the institution, maintains an office; and
 - (II) published again approximately 30 days and 60 days after the date of the first publication; and
 - (B) as required in Section 45-1-101 for 60 days.
- (b)
 - (i) Within 60 days of taking possession of a depository institution, the commissioner shall send a similar notice to all persons whose identity is reflected in the books or records of the institution as depositors or other creditors, secured or unsecured, parties to litigation involving the institution pending at the date the commissioner takes possession of the institution, and all other potential claimants against the institution whose identity is reasonably ascertainable by the commissioner from examination of the books and records of the institution. No notice is required in connection with accounts or other liabilities of the institution that will be paid in full or be fully assumed by another depository institution or trust company. The notice shall specify a filing date for claims against the institution not less than 60 days after the date of mailing. Claimants whose claims against the institution have been assumed by another depository institution or trust company pursuant to a merger or purchase and assumption agreement with the commissioner, or a federal deposit insurance agency appointed as receiver or liquidator of the institution, shall be notified of the assumption of their claims and the name and address of the assuming party within 60 days after the claim is assumed. Unless a purchase and assumption or merger agreement requires otherwise, the assuming party shall give all required notices. Notice shall be mailed to the address appearing in the books and records of the institution.
 - (ii) Inadvertent or unintentional failure to mail a notice to any person entitled to written notice under this paragraph does not impose any liability on the commissioner or any receiver or liquidator appointed by him beyond the amount the claimant would be entitled to receive if the claim had been timely filed and allowed. The commissioner or any receiver or liquidator appointed by him are not liable for failure to mail notice unless the claimant establishes that it had no knowledge of the commissioner taking possession of the institution until after all opportunity had passed for obtaining payment through filing a claim with the commissioner, receiver, or liquidator.
- (c) Upon good cause shown, the court having supervisory jurisdiction may extend the time in which the commissioner may serve any notice required by this chapter.
- (d) The commissioner has the sole power to adjudicate any claim against the institution, its property or other assets, tangible or intangible, and to settle or compromise claims within the priorities set forth in Section 7-2-15. Any action of the commissioner is subject to judicial review as provided in Subsection (9).
- (e) A receiver or liquidator of the institution appointed by the commissioner has all the duties, powers, authority, and responsibilities of the commissioner under this section. All claims against the institution shall be filed with the receiver or liquidator within the applicable time

- specified in this section and the receiver or liquidator shall adjudicate the claims as provided in Subsection (2)(d).
- (f) The procedure established in this section is the sole remedy of claimants against an institution or its assets in the possession of the commissioner.
- (3) With respect to a claim which appears in the books and records of an institution or other person in the possession of the commissioner as a secured claim, which, for purposes of this section is a claim that constitutes an enforceable, perfected lien, evidenced in writing, on the assets or other property of the institution:
- (a) The commissioner shall allow or disallow each secured claim filed on or before the filing date within 30 days after receipt of the claim and shall notify each secured claimant by certified mail or in person of the basis for, and any conditions imposed on, the allowance or disallowance.
- (b) For all allowed secured claims, the commissioner shall be bound by the terms, covenants, and conditions relating to the assets or other property subject to the claim, as set forth in the note, bond, or other security agreement which evidences the secured claim, unless the commissioner has given notice to the claimant of his intent to abandon the assets or other property subject to the secured claim at the time the commissioner gave the notice described in Subsection (3)(a).
- (c) No petition for lifting the stay provided by Section 7-2-7 may be filed with respect to a secured claim before the claim has been filed and allowed or disallowed by the commissioner in accordance with Subsection (3)(a).
- (4) With respect to all other claims other than secured claims:
- (a) Each claim filed on or before the filing date shall be allowed or disallowed within 180 days after the final publication of notice.
- (b) If notice of disallowance is not served upon the claimant by the commissioner within 210 days after the date of final publication of notice, the claim is considered disallowed.
- (c) The rights of claimants and the amount of a claim shall be determined as of the date the commissioner took possession of the institution under this chapter. Claims based on contractual obligations of the institution in existence on the date of possession may be allowed unless the obligation of the institution is dependent on events occurring after the date of possession, or the amount or worth of the claim cannot be determined before any distribution of assets of the institution is made to claimants having the same priority under Section 7-2-15.
- (d)
- (i) An unliquidated claim against the institution, including claims based on alleged torts for which the institution would have been liable on the date the commissioner took possession of the institution and any claims for a right to an equitable remedy for breach of performance by the institution, may be filed in an estimated amount. The commissioner may disallow or allow the claim in an amount determined by the commissioner, settle the claim in an amount approved by the court, or, in his discretion, refer the claim to the court designated by Section 7-2-2 for determination in accordance with procedures designated by the court. If the institution held on the date of possession by the commissioner a policy of insurance that would apply to the liability asserted by the claimant, the commissioner, or any receiver appointed by him may assign to the claimant all rights of the institution under the insurance policy in full satisfaction of the claim.
- (ii) If the commissioner finds there are or may be issues of fact or law as to the validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under the provisions of this chapter, he may appoint a hearing examiner to conduct a hearing and

to prepare and submit recommended findings of fact and conclusions of law for final consideration by the commissioner. The hearing shall be conducted as provided in rules or regulations issued by the commissioner. The decision of the commissioner shall be based on the record before the hearing examiner and information the commissioner considers relevant and shall be subject to judicial review as provided in Subsection (9).

- (e) A claim may be disallowed if it is based on actions or documents intended to deceive the commissioner or any receiver or liquidator appointed by him.
 - (f) The commissioner may defer payment of any claim filed on behalf of a person who was at any time in control of the institution within the meaning of Section 7-1-103, pending the final determination of all claims of the institution against that person.
 - (g) The commissioner or any receiver appointed by him may disallow a claim that seeks a dollar amount if it is determined by the court having jurisdiction under Section 7-2-2 that the commissioner or receiver or conservator will not have any assets with which to pay the claim under the priorities established by Section 7-2-15.
 - (h) The commissioner may adopt rules to establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed against an institution under this chapter.
 - (i) In establishing alternative dispute resolution processes, the commissioner shall strive for procedures that are expeditious, fair, independent, and low cost. The commissioner shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.
 - (j) The commissioner may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the commissioner or any receiver appointed by him, must agree to the use of the process in a particular case.
- (5)
- (a) Claims filed after the filing date are disallowed, unless:
 - (i) the claimant who did not file his claim timely demonstrates that he did not have notice or actual knowledge of the proceedings in time to file a timely proof of claim; and
 - (ii) proof of the claim was filed prior to the last distribution of assets. For the purpose of this subsection only, late filed claims may be allowed if proof was filed before the final distribution of assets of the institution to claimants of the same priority and are payable only out of the remaining assets of the institution.
 - (b) A late filed claim may be disallowed under any other provision of this section.
- (6) Debts owing to the United States or to any state or its subdivisions as a penalty or forfeiture are not allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose.
- (7) Except as otherwise provided in Subsection 7-2-15(1)(a), interest accruing on any claim after the commissioner has taken possession of an institution or other person under this chapter may be disallowed.
- (8)
- (a) A claim against an institution or its assets based on a contract or agreement may be disallowed unless the agreement:
 - (i) is in writing;
 - (ii) is otherwise a valid and enforceable contract; and
 - (iii) has continuously, from the time of its execution, been an official record of the institution.

- (b) The requirements of this Subsection (8) do not apply to claims for goods sold or services rendered to an institution in the ordinary course of business by trade creditors who do not customarily use written agreements or other documents.
- (9)
 - (a) Objection to any claim allowed or disallowed may be made by any depositor or other claimant by filing a written objection with the commissioner within 30 days after service of the notice of allowance or disallowance. The commissioner shall present the objection to the court for hearing and determination upon written notice to the claimant and to the filing party. The notice shall set forth the time and place of hearing. After the 30-day period, no objection may be filed. This Subsection (9) does not apply to secured claims allowed under Subsection (3).
 - (b) The hearing shall be based on the record before the commissioner and any additional evidence the court allowed to provide the parties due process of law.
 - (c) The court may not reverse or otherwise modify the determination of the commissioner with respect to the claim unless it finds the determination of the commissioner to be arbitrary, capricious, or otherwise contrary to law. The burden of proof is on the party objecting to the determination of the commissioner.
 - (d) An appeal from any final judgment of the court with respect to a claim may be taken as provided by law by the claimant, the commissioner, or any person having standing to object to the allowance or disallowance of the claim.
- (10) If a claim against the institution has been asserted in any judicial, administrative, or other proceeding pending at the time the commissioner took possession of the institution under this chapter or under Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, the claimant shall file copies of all documents of record in the pending proceeding with the commissioner within the time for filing claims as provided in Subsection (2). Such a claim shall be allowed or disallowed within 90 days of the receipt of the complete record of the proceedings. No application to lift the stay of a pending proceeding shall be filed until the claim has been allowed or disallowed. The commissioner may petition the court designated by Section 7-2-2 to lift the stay to determine whether the claim should be allowed or disallowed.
- (11) All claims allowed by the commissioner and not disallowed or otherwise modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be evidenced by a certificate payable only out of the assets of the institution in the possession of the commissioner, subject to the priorities set forth in Section 7-2-15. This provision does not apply to a secured claim allowed by the commissioner under Subsection (3)(a).

Amended by Chapter 258, 2015 General Session

7-2-7 Stay of proceedings against institution -- Relief.

- (1) Except as otherwise specified, a taking of an institution or other person by the commissioner or a receiver or liquidator appointed by the commissioner under this chapter operates as a stay of the commencement or continuation of the following with respect to the institution:
 - (a) any judicial, administrative, or other proceeding, including service of process;
 - (b) the enforcement of any judgment;
 - (c) any act to obtain possession of property;
 - (d) any act to create, perfect, or enforce any lien against property of the institution;
 - (e) any act to collect, assess, or recover a claim against the institution; and
 - (f) the setoff of any debt owing to the institution against any claim against the institution.
- (2) Except as provided in Subsections (3), (4), (5), and (8):

- (a) the stay of any action against property of the institution continues until the institution has no interest in the property; and
- (b) the stay of any other action continues until the earlier of when the case is:
 - (i) closed; or
 - (ii) dismissed.
- (3) On the motion of any party in interest and after notice and a hearing, the court may terminate, annul, modify, condition, or otherwise grant relief from the stay:
 - (a) for cause, including the lack of adequate protection of an interest in property of the party in interest; or
 - (b) with respect to a stay of any action against property if:
 - (i) the institution does not have an equity interest in the property; and
 - (ii) the property would have no value in a reorganization or liquidation of the institution.
- (4)
 - (a) Thirty days after a request under Subsection (3) for relief from the stay of any act against property of the institution, the stay is terminated with respect to the party in interest making the request unless the court, after notice and a hearing, orders the stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under Subsection (3).
 - (b) A hearing under this Subsection (4) may be:
 - (i) a preliminary hearing; or
 - (ii) consolidated with the final hearing under Subsection (3).
 - (c) The court shall order the stay continued in effect pending the conclusion of the final hearing under Subsection (3) if there is a reasonable likelihood that the party opposing relief from the stay will prevail at the conclusion of the final hearing.
 - (d) If the hearing under this Subsection (4) is a preliminary hearing, the final hearing shall be commenced not later than 30 days after the conclusion of the preliminary hearing.
- (5) Upon request of a party in interest, the court, with or without a hearing, may grant relief from the stay provided under Subsection (1) to the extent necessary to prevent irreparable damage to the interest of an entity in property, if the interest will or could be damaged before there is an opportunity for notice and a hearing under Subsection (3) or (4).
- (6) In any hearing under Subsection (3) or (4) concerning relief from the stay of any act under Subsection (1):
 - (a) the party requesting relief has the burden of proof on the issue of the institution's equity in property; and
 - (b) the party opposing relief has the burden of proof on all other issues.
- (7) A person injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees and, when appropriate, may recover punitive damages.
- (8) Nothing in this section prevents the holder or the trustee for any holder of any bond, note, debenture, or other evidence of indebtedness issued by a city, county, municipal corporation, commission, district, authority, agency, subdivision, or other public body pursuant to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, from exercising any rights it may have to sell, take possession of, foreclose upon, or enforce a lien against or security interest in property of an institution that has been pledged, assigned, or mortgaged as collateral for that bond, note, debenture, or evidence of indebtedness, or as collateral for a letter of credit or other instrument issued in support of that bond, note, debenture, or evidence of indebtedness.
- (9) Notice of any hearing under this section shall be served as provided in Subsection 7-2-9(6).

Amended by Chapter 324, 2010 General Session

7-2-8 Special deputies or agents -- Appointment -- Bond.

The commissioner may appoint one or more special deputies or agents to assist him in the proceedings. The commissioner may fix the compensation of any agent appointed to assist him. The commissioner may require from agents security for the faithful discharge of their duties. All bonds given under this section shall be deposited with the commissioner and kept in his office.

Enacted by Chapter 8, 1983 General Session

7-2-9 Conservatorship, receivership, or liquidation of institution -- Appointment of receiver -- Review of actions.

(1) Upon taking possession of the institution, the commissioner may appoint a receiver to perform the duties of the commissioner. Subject to any limitations, conditions, or requirements specified by the commissioner and approved by the court, a receiver shall have all the powers and duties of the commissioner under this chapter and the laws of this state to act as a conservator, receiver, or liquidator of the institution. Actions of the commissioner in appointing a receiver shall be subject to review only as provided in Section 7-2-2.

- (2)
- (a) If the deposits of the institution are to any extent insured by a federal deposit insurance agency, the commissioner may appoint that agency as receiver. After receiving notice in writing of the acceptance of the appointment, the commissioner shall file a certificate of appointment in the commissioner's office and with the clerk of the district court. After the filing of the certificate, the possession of all assets, business, and property of the institution is considered transferred from the institution and the commissioner to the agency, and title to all assets, business, and property of the institution is vested in the agency without the execution of any instruments of conveyance, assignment, transfer, or endorsement.
 - (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all the powers and privileges provided by the laws of this state and the United States with respect to the conservatorship, receivership, or liquidation of an institution and the rights of its depositors, and other creditors, including authority to make an agreement for the purchase of assets and assumption of deposit and other liabilities by another depository institution or take other action authorized by Title 12 of the United States Code to maintain the stability of the banking system. Such action by a federal deposit insurance agency may be taken upon approval by the court, with or without prior notice. Such actions or agreements may be disapproved, amended, or rescinded only upon a finding by the court that the decisions or actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of any conflict between state and federal law, including provisions for adjudicating claims against the institution or receiver, the receiver shall comply with the federal law and any resulting violation of state law does not by itself constitute grounds for the court to disapprove the actions of the receiver or impose any penalty for such violation.
 - (c) The commissioner or any receiver appointed by him shall possess all the rights and claims of the institution against any person whose breach of fiduciary duty or violations of the laws of this state or the United States applicable to depository institutions may have caused or contributed to a condition which resulted in any loss incurred by the institution or to its assets in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary duty includes those duties and standards applicable under statutes and laws of this state and the United States to a director, officer, or other party employed by or rendering professional

services to a depository institution whose deposits are insured by a federal deposit insurance agency. Upon taking possession of an institution, no person other than the commissioner or receiver shall have standing to assert any such right or claim of the institution, including its depositors, creditors, or shareholders unless the right or claim has been abandoned by the commissioner or receiver with approval of the court. Any judgment based on the rights and claims of the commissioner or receiver shall have priority in payment from the assets of the judgment debtors.

- (d) For the purposes of this section, the term "federal deposit insurance agency" shall include the Federal Deposit Insurance Corporation, the National Credit Union Administration and any departments thereof or successors thereto, and any other federal agency authorized by federal law to act as a conservator, receiver, and liquidator of a federally insured depository institution, including the Resolution Trust Corporation and any department thereof or successor thereto.
- (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the receiver is not a federal deposit insurance agency, the compensation to be paid such assistants, agents, accountants, and legal counsel shall be approved by the commissioner. All expenses incident to the receivership shall be paid out of the assets of the institution. If a receiver is not a federal deposit insurance agency, the receiver and any assistants and agents shall provide bond or other security specified by the commissioner and approved by the court for the faithful discharge of all duties and responsibilities in connection with the receivership including the accounting for money received and paid. The cost of the bond shall be paid from the assets of the institution. Suit may be maintained on the bond by the commissioner or by any person injured by a breach of the condition of the bond.
- (4)
- (a) Upon the appointment of a receiver for an institution in possession pursuant to this chapter, the commissioner and the department are exempt from liability or damages for any act or omission of any receiver appointed pursuant to this section.
- (b) This section does not limit the right of the commissioner to prescribe and enforce rules regulating a receiver in carrying out its duties with respect to an institution subject to the jurisdiction of the department.
- (c) Any act or omission of the commissioner or of any federal deposit insurance agency as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the exercise of a discretionary function within the meaning of Section 63G-7-301 of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.
- (5) Actions, decisions, or agreements of a receiver under this chapter, other than allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review only as follows:
- (a) A petition for review shall be filed with the court having jurisdiction under Section 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or its terms are filed with the court.
- (b) The petition shall state in simple, concise, and direct terms the facts and principles of law upon which the petitioner claims the act, decision, or agreement of the receiver was or would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may be damaged thereby. The court shall dismiss any petition which fails to allege that the petitioner would be directly injured or damaged by the act, decision, or agreement which is the subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect to the allegations set forth in a petition or response.
- (c) The receiver shall have 30 days after service of the petition within which to respond.

- (d) All further proceedings are to be conducted in accordance with the Utah Rules of Civil Procedure.
- (6) All notices required under this section shall be made in accordance with the Utah Rules of Civil Procedure and served upon the attorney general of the state of Utah, the commissioner of financial institutions, the receiver of the institution appointed under this chapter, and upon the designated representative of any party in interest who requests in writing such notice.

Amended by Chapter 378, 2010 General Session

7-2-10 Inventory of assets -- Listings of claims -- Report of proceedings -- Filing -- Inspection.

As soon as is practical after taking possession of an institution the commissioner, or any receiver or liquidator appointed by him, shall make or cause to be made in duplicate an inventory of its assets, one copy to be filed in his office and one with the clerk of the district court. Upon the expiration of the time fixed for presentation of claims the commissioner, or any receiver or liquidator appointed by him, shall make in duplicate a full and complete list of the claims presented, including and specifying claims disallowed by him, of which one copy shall be filed in his office and one copy in the office of the clerk of the district court. The commissioner, or any receiver or liquidator appointed by him, shall in like manner make and file supplemental lists showing all claims presented after the filing of the first list. The supplemental lists shall be filed every six months and at least 15 days before the declaration of any dividend. At the time of the order for final distribution the commissioner, or any receiver or liquidator appointed by him, shall make a report in duplicate of the proceeding, showing the disposition of the assets and liabilities of the institution, one copy to be filed in his office and one with the clerk of the district court. The accounting, inventory, and lists of claims shall be open at all reasonable times for inspection. Any objection to any report or accounting shall be filed with the clerk of the district court within 30 days after the report of accounting has been filed by the commissioner, or any receiver or liquidator appointed by him, and shall be subject to judicial review only as provided in Section 7-2-9.

Amended by Chapter 378, 2010 General Session

7-2-11 Special counsel -- Employment by attorney general.

Upon taking possession of any institution or other person subject to the jurisdiction of the department, the commissioner may request the attorney general to employ special counsel on his behalf to assist and advise him in connection with a liquidation or reorganization proceeding and the prosecution or defense of any action or proceeding connected with it.

Enacted by Chapter 8, 1983 General Session

7-2-12 Powers of commissioner in possession -- Sale of assets -- Postpossession financing -- New deposit instruments -- Executory contracts -- Transfer of property -- Avoidance of transfers -- Avoidable preferences -- Setoff.

- (1) Upon taking possession of the institution, the commissioner may do all things necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the affairs of the institution in a manner he determines to be in the best interests of the institution's depositors and creditors. Any such determination by the commissioner may not be overruled by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law. In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may

compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of the property of the institution for cash or other consideration. The commissioner shall give such notice as the court may direct to the institution of the time and place of hearing upon an application to the court for approval of the sale. The commissioner shall execute and deliver to the purchaser of any property of the institution sold by him those deeds or instruments necessary to evidence the passing of title.

- (2) With approval of the court and upon terms and with priority determined by the court, the commissioner may borrow money and issue evidence of indebtedness. To secure repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any or all of the property of the institution superior to any charge on the property for expenses of the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets in the charge of the commissioner, expediting the making of distributions to depositors and other claimants, aiding in the reopening or reorganization of the institution or its merger or consolidation with another institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or other person lawfully in charge of the affairs of the institution is under any personal obligation to repay those loans. The commissioner may take any action necessary or proper to consummate the loan and to provide for its repayment and to give bond when required for the faithful performance of all undertakings in connection with it. The commissioner or special deputy shall make application to the court for approval of any loan proposed under this section. Notice of hearing upon the application shall be given as the court directs. At the hearing upon the application any stockholder or shareholder of the institution or any depositor or other creditor of the institution may appear and be heard on the application. Prior to the obtaining of a court order, the commissioner or special deputy in charge of the affairs of the institution may make application or negotiate for the loan or loans subject to the obtaining of the court order.
- (3) With the approval of the court pursuant to a plan of reorganization or liquidation under Section 7-2-18, the commissioner may provide for depositors to receive new deposit instruments from a depository institution that purchases or receives some or all of the assets of the institution in the possession of the commissioner. All new deposit instruments issued by the acquiring depository institution may, in accordance with the terms of the plan of reorganization or liquidation, be subject to different amounts, terms, and interest rates than the original deposit instruments of the institution in the possession of the commissioner. All deposit instruments issued by the acquiring institution shall be considered new deposit obligations of the acquiring institution. The original deposit instruments issued by the institution in the possession of the commissioner are not liabilities of the acquiring institution, unless assumed by the acquiring institution. Unpaid claims of depositors against the institution in the possession of the commissioner continue, and may be provided for in the plan of reorganization or liquidation.
- (4) The commissioner, after taking possession of any institution or other person subject to the jurisdiction of the department, may terminate any executory contract, including standby letters of credit, unexpired leases and unexpired employment contracts, to which the institution or other person is a party. If the termination of an executory contract or unexpired lease constitutes a breach of the contract or lease, the date of the breach is the date on which the commissioner took possession of the institution. Claims for damages for breach of an executory contract shall be filed within 30 days of receipt of notice of the termination, and if allowed, shall be paid in the same manner as all other allowable claims of the same priority out of the assets of the institution available to pay claims.

- (5) With approval of the court and upon a showing by the commissioner that it is in the best interests of the depositors and creditors, the commissioner may transfer property on account of an indebtedness incurred by the institution prior to the date of the taking.
- (6)
- (a) The commissioner may avoid any transfer of any interest of the institution in property or any obligation incurred by the institution that is void or voidable by a creditor under Title 25, Chapter 6, Uniform Voidable Transactions Act.
 - (b) The commissioner may avoid any transfer of any interest in real property of the institution that is void as against or voidable by a subsequent purchaser in good faith and for a valuable consideration of the same real property or any portion thereof who has duly recorded his conveyance at the time possession of the institution is taken, whether or not such a purchaser exists.
 - (c) The commissioner may avoid any transfer of any interest in property of the institution or any obligation incurred by the institution that is invalid or void as against, or is voidable by a creditor that extends credit to the institution at the time possession of the institution is taken by the commissioner, and that obtains, at such time and with respect to such credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial lien on the property involved, whether or not such a creditor exists.
 - (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any transfer of any interest in property of the institution shall be unaffected by and without regard to any knowledge of the commissioner or of any creditor of the institution.
 - (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.
 - (f) The commissioner may avoid and recover any payment or other transfer of any interest in property of the institution to or for the benefit of a creditor, for or on account of an antecedent debt owed by the institution before the transfer was made if the creditor at the time of such transfer had reasonable cause to believe that the institution was insolvent, and if the payment or other transfer will allow the creditor to obtain a greater percentage of his debt than he would be entitled to under the provisions of Section 7-2-15. For the purposes of this subsection:
 - (i) antecedent debt does not include earned wages and salaries and other operating expenses incurred and paid in the normal course of business;
 - (ii) a transfer of any interest in real property is deemed to have been made or suffered when it became so far perfected that a subsequent good faith purchaser of the property from the institution for a valuable consideration could not acquire an interest superior to the transferee; and
 - (iii) a transfer of property other than real property is deemed to have been made or suffered when it became so far perfected that a creditor on a simple contract could not acquire a lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest of the transferee.
 - (g) For purposes of this section, "date of possession" means the earlier of the date the commissioner takes possession of a financial institution under Title 7, Chapter 2, Possession of Depository Institution by Commissioner, or the date when the commissioner enters an order suspending payments to depositors and other creditors under Section 7-2-19.
- (7)
- (a) With or without the prior approval of the court, the commissioner or any federal deposit insurance agency appointed by him as receiver or liquidator of a depository institution closed

by the commissioner under the provisions of this chapter may setoff against the deposits or other liabilities of the institution any debts or other obligations of the depositor or claimant due and owing to the institution. The amount of any setoff against the liabilities of the institution shall be no greater than the amount the depositor or claimant would receive pursuant to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a depositor's or claimant's claim against the institution will or may be less than the full amount of the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the court, after notice and opportunity for hearing, approves the estimate for purposes of making the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator appointed by him shall give written notice to the depositor or claimant of the amount setoff.

- (b) The existence and amount of a debtor or creditor relationship or both, between the institution and its depositor or claimant and the right to the proceeds in a deposit account shall be determined solely by the books and records of the institution.
- (c) Any contract purporting to affect the right of setoff shall be in writing and signed by the depositor-debtor and an authorized officer of the institution and be maintained as a part of the records of the institution.
- (d) Any claim that a deposit account is a special account not subject to setoff because it was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction of or as security for an indebtedness to the institution or that the right to the deposit actually belongs to a third party does not affect the right to setoff of the commissioner or any receiver or liquidator appointed by him unless the special nature of the account is clearly shown in the books and records of the institution.
- (e) In the absence of any other instrument in writing, the terms and provisions of the signature card applicable to a particular account in effect at the time the commissioner takes possession of the institution shall be determinative of the right of setoff by the commissioner or any receiver or liquidator appointed by him.
- (f) Knowledge of the institution or of any director, officer, or employee of the institution that the nature of the account is other than as shown in the books and records of the institution does not affect the right of setoff by the commissioner or any receiver or liquidator appointed by him.
- (g) The liability of the commissioner or any receiver or liquidator appointed by him for exercising a right of setoff other than as authorized by this section shall be only to a person who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is superior to that of the person whose debt to the institution was setoff against the account. The amount of any such liability shall be no greater than the amount of the setoff and neither the commissioner or any receiver or liquidator appointed by him shall be liable for any action taken under this section unless the action taken is determined by the court to be arbitrary or capricious.

Amended by Chapter 204, 2017 General Session

7-2-13 Collections in liquidation -- Deposit -- Preference.

The money collected in process of a liquidation by the commissioner shall be from time to time deposited, subject to his order as herein provided, in one or more federally insured depository institutions organized under the laws of this state. In case of the suspension or insolvency of the depository institution, these deposits shall be preferred before all other deposits.

Enacted by Chapter 16, 1981 General Session

7-2-14 Expenses during possession.

The expenses reimbursable to the commissioner during possession or in the course of proceedings under this chapter include the compensation of deputies, agents, clerks, and examiners employed by him and reasonable fees for counsel, accountants or consultants employed by him or on his behalf. The compensation shall be fixed by the commissioner subject to the approval of the court. The expenses of the proceedings shall be paid out of the property of the institution in the hands of the commissioner, shall be a valid charge against that property, and shall be paid first in order of priority. No expenses may be paid out of the property of the institution until an account of the expense has been filed with and approved by the court.

Amended by Chapter 8, 1983 General Session

7-2-15 Priority of obligations, expenses, and claims -- Distribution of balance of assets.

- (1) The following obligations, expenses, and claims have the following priority:
- (a) first, any obligation the commissioner may have under Subsection 7-2-6(3)(b) to be bound by the terms, covenants, and conditions of obligations secured by assets or property of the institution;
 - (b) second, administrative expenses, including those allowed under Section 7-2-14;
 - (c) third, unsecured claims for wages, salaries, or commissions, including vacation, severance, or sick leave pay, earned by an individual within 90 days before the date of the commissioner's possession, in an amount not exceeding \$2,000 for each individual;
 - (d) fourth, claims of depositors. Any federal deposit insurance agency or other deposit insurer is subrogated to all rights of the depositors against the institution, its officers and directors, and its persons in control of the institution as control is defined in Section 7-1-103 to the extent of all payments made for the benefit of the depositors. "Payments," as used in this subsection, includes arrangements by a federal deposit insurance agency for the assumption or payment of the deposit liabilities by another institution whose deposits are insured by a federal deposit insurance agency. The right of any agency of the United States insuring deposits or savings obligations to be subrogated to the rights of depositors upon payment of their claims may not be less extensive than the law of the United States provides with respect to subrogation to the rights of depositors in national banks. For the purposes of this section, a contractual commitment to advance funds, including a standby letter of credit, may not be considered a deposit liability of the institution;
 - (e) fifth, all other unsecured claims in amounts allowed by the court, including claims of secured creditors to the extent the amount of their claims exceed the present fair market value of their collateral. The claim of a lessor for damages resulting from the termination of a lease of property may not be allowed in an amount in excess of the rent reserved by the lease, without acceleration, for 60 days after the lessor repossessed the leased property, or the leased property was surrendered to the lessor, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid rent due under the lease, without acceleration, on the date of possession or surrender. A claim for damages resulting from the termination of an employment contract, may not be allowed in an amount in excess of the compensation provided by the contract, without acceleration, for 90 days after the employee was directed to terminate, or the employee terminated, performance under the contract, whichever first occurs, whether before or after the commissioner took

possession of the institution, plus any unpaid compensation due under the contract, without acceleration, on the date the employee was directed to terminate or the employee terminated performance. Claims for damages resulting from the termination of employment contracts of persons who were in control of the institution, as control is defined in Section 7-1-103, are not entitled to priority under this subsection. Claims for damages for breach of a commitment to advance funds shall be limited to the amount due and owing by the institution on the date the commissioner took possession of the institution;

- (f) sixth, claims for debt that are subordinated under the provisions of a subordination agreement or other instrument;
 - (g) seventh, claims of persons who were at any time in control of the institution as control is defined in Section 7-1-103; and
 - (h) eighth, all other claims.
- (2) The commissioner shall classify each claim presented for priority purposes under Subsection (1) and shall indicate the classification on any certificate issued under the provisions of Subsection 7-2-6(11). This classification is final, subject to review by the court upon a timely objection filed under Subsection 7-2-6(9).
- (3) When the commissioner has paid to each depositor and creditor of the institution whose claims have been proved and allowed the full amount of the claim, has made proper provision for unclaimed or unpaid deposits or dividends, and has paid all the expenses of the liquidation, he shall distribute the balance of the assets of the institution in his possession among the shareholders of the institution in proportion to the holdings and classes of this stock. Unless a court of competent jurisdiction determines otherwise, the shareholders shall be determined by the books and records of the institution as of the date the commissioner took possession.

Amended by Chapter 49, 1995 General Session

7-2-16 Interim ratable dividends.

At any time after the expiration of the date fixed for the presentation of claims and prior to the declaration of a final dividend the commissioner may, out of the funds remaining in his hands after the payment of expenses, declare and pay, subject to their priorities established under Section 7-2-15, one or more interim ratable dividends to any person and in the amount and upon such notice as the court directs.

Amended by Chapter 267, 1989 General Session

7-2-17 Disposition of records after liquidation.

After liquidation of an institution under this chapter, the commissioner shall dispose of its books, papers, and records in accordance with the order of the court.

Enacted by Chapter 16, 1981 General Session

7-2-18 Plan for reorganization or liquidation of institution -- Hearing -- Procedure -- Effect -- Appeals.

- (1) If the commissioner has taken possession of any institution or other person under the jurisdiction of the department he may propose to the court a plan for the reorganization or liquidation of the institution or the establishment of a new institution by filing a petition with the court, setting forth the details of the plan and requesting the court to set a day for hearing on the petition.

- (2) The court shall make an order fixing a day for the hearing of the petition, prescribing the manner in which notice of the hearing is given, and may prescribe a deadline for filing written objections. The court may adjourn the hearing from time to time and no further notice is required. At the time of hearing or any adjournment of a hearing the court shall take testimony, and if it appears that it is in the best interests of the depositors and other creditors, the court shall approve the plan.
- (3) A plan of reorganization or liquidation approved by the court shall be fully binding upon and constitute a final adjudication of all claims, rights, and interests of all depositors, creditors, shareholders, and members of the institution being reorganized or liquidated, and all other parties in interest with regard to the plan and with regard to any institution or other person receiving any assets or assuming any liabilities under the plan.
- (4) Notice of an appeal of an order approving a plan of reorganization or liquidation shall be filed within 10 days after the date of entry of the order appealed from.

Amended by Chapter 1, 1986 Special Session 4

Amended by Chapter 1, 1986 Special Session 4

7-2-19 Suspension of payments by institution -- Order of commissioner -- Approval of governor -- Period effective -- Exempt payments -- Operation during suspension -- Modification of orders -- Adoption of rules and regulations.

- (1) The commissioner, whenever in his opinion the action is necessary in the public interest, may, if the governor approves, order such institutions as are subject to his supervision to suspend the payment in any manner of their respective liabilities to their depositors and other creditors, except as hereinafter provided.
- (2) The order shall become effective upon notice, and shall continue in full force and effect until rescinded or modified by him. No such order shall be issued for an initial period of more than 60 days, but any such order may, if the governor approves, be extended from time to time for further periods not exceeding 60 days each.
- (3) Nothing contained in this chapter shall affect the right of the institutions to pay current operating expenses and other liabilities incurred during a period of suspension.
- (4) Whenever in the opinion of the commissioner conditions warrant such action, he may, if the governor approves, authorize the issuance of clearing house certificates, post notes or other evidences of indebtedness, either during a period of suspension, or during such longer period as he may prescribe, and during a period of suspension, he may permit the suspended institution to receive deposits and may authorize any such institution to pay any part of its liabilities, or of any class thereof, payment of which has been suspended.
- (5) He may, if the governor approves, at any time, by order, modify or rescind any or all previous orders made by him under authority of this chapter.
- (6) The commissioner may, if the governor approves, prescribe such rules and regulations as he considers necessary in order to carry out the provisions of this chapter, and an order may be issued on such terms and conditions as may be incorporated in the order.

Enacted by Chapter 16, 1981 General Session

7-2-21 Applicability of Utah Procurement Code.

No action of the commissioner taken under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

7-2-22 Termination of authority to transact business.

If an institution or other person subject to the jurisdiction of the department is operated by a federal deposit insurance agency or its appointee pursuant to a federal receivership or conservatorship for a period of 180 days or more, the authority of that institution or person to transact business under this title shall terminate upon the expiration of the 180-day period.

Enacted by Chapter 229, 1987 General Session

7-2-23 Limitation of action -- Tolling of period.

- (1) If applicable law, an order entered in any proceeding, any cause of action arising under this chapter, or an agreement, fixes a period within which the institution, the commissioner, or any receiver or liquidator appointed under Section 7-2-9 may commence an action, and the period has not expired before the date of possession by the commissioner, the receiver or liquidator may commence an action only before the later of:
 - (a) the end of the period;
 - (b) three years after the date of appointment of a receiver or liquidator under Section 7-2-9; or
 - (c) three years after the date of possession by the commissioner.
- (2) No statute of limitations as to any cause of action against an officer or director of a depository institution begins to run as to the commissioner or any receiver or liquidator appointed under Section 7-2-9 until the date the commissioner takes possession of the institution under this chapter.

Enacted by Chapter 267, 1989 General Session

**Chapter 3
Banks**

7-3-1 Application of chapter.

This chapter applies to all banks organized under the laws of this state, to all other banks doing business in this state as permitted by the laws and Constitution of the United States, and to all persons conducting banking business in this state except as provided in Chapter 1, General Provisions.

Amended by Chapter 189, 2014 General Session

7-3-2 Restrictions on conduct of banking business.

- (1) The establishment or operation in this state of private or partnership banks is expressly prohibited.
- (2) An institution may establish or maintain a main office or branch in this state at which to conduct banking business only if:
 - (a) it is legitimately chartered as a bank by a state, the federal government, or a foreign government; and

- (b) in the case of a bank whose home state is not Utah, it is authorized to have a branch in Utah under the laws of this state and the laws of its home state.

Amended by Chapter 49, 1995 General Session

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

- (1)
 - (a) Except as provided under Subsection (1)(b), a person is considered to be conducting a banking business and is a bank subject to the provisions of this title that are applicable to banks if the person is authorized:
 - (i) under the laws of this:
 - (A) state;
 - (B) another state;
 - (C) the United States;
 - (D) the District of Columbia; or
 - (E) a territory of the United States; and
 - (ii)
 - (A) to accept deposits from the public; and
 - (B) to conduct such other business activities as may be authorized by statute or by the commissioner in accordance with Subsection 7-3-10(3).
 - (b) A person is not considered to be a bank subject to the provisions of this title that are applicable to banks if the person is authorized to conduct the business of:
 - (i) a federal savings and loan association;
 - (ii) a federal savings bank;
 - (iii) an industrial bank subject to Chapter 8, Industrial Banks;
 - (iv) a federally chartered credit union; or
 - (v) a credit union subject to Chapter 9, Utah Credit Union Act.
- (2) A person authorized to operate as a bank in this state may operate as a credit card bank if it:
 - (a) engages only in credit card operations;
 - (b) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;
 - (c) does not accept a savings or time deposit of less than \$100,000;
 - (d) maintains only one office that accepts deposits; and
 - (e) does not engage in the business of making commercial loans.
- (3) All deposit accounts in banks or branches subject to the jurisdiction of the department shall be insured by the Federal Deposit Insurance Corporation or a successor to the Federal Deposit Insurance Corporation.

Amended by Chapter 354, 2020 General Session

7-3-3.2 Securities business permitted -- Activities conducted by subsidiary -- Disclosure statements required.

- (1) A bank has all necessary and incidental powers to engage in the business of purchasing, selling, underwriting, and dealing in securities, whether as a principal for its own account or as agent or broker for a customer, subject to the limitations in this section.
- (2) The securities business that a bank may conduct as a principal for its own account is limited to the activities specified in Subsections (2)(a) through (d). A bank does not otherwise

have power to enter securities underwriting or act as a principal in issuance or marketing of securities.

- (a) A bank may purchase for investment and subsequently resell those types of securities authorized by statute or rule of the commissioner, including, without limitation, shares purchased in accordance with Section 7-3-21 and government or other securities lawfully acquired for the investment or trading portfolio of the bank or any of its subsidiaries or affiliates in accordance with any limitation established by any other federal or state statute, regulation, or rule.
 - (b) A bank may sell securities of any kind acquired in the ordinary course of business, including, without limitation, through foreclosure on pledged securities.
 - (c) A bank may underwrite or deal in securities issued by a municipality, county, or other local governmental entity or an agency of any such governmental entity, securities issued by a state or any of its agencies, or securities issued by the federal government or any of its agencies.
 - (d) A bank may establish or underwrite the securities of registered investment companies that are limited to operating or investing in money market funds or other short-term government or corporate debt instruments.
- (3) This section may not be interpreted to alter the traditional rights and powers of banks to issue deposit instruments or similar instruments that acknowledge receipt of money for customers, even though the instruments may for some purposes be considered securities.
- (4) Securities activities under this section, except those activities described in Subsections (2) (a) and (b), shall be conducted only through a subsidiary. Any such subsidiary shall be established pursuant to rules that the commissioner may adopt after notice and hearing. Any such rules shall further define the standards by which a securities subsidiary of a bank may be established and operated, including the requirement for registration, if required, as a broker-dealer with state, federal, and self-regulatory agencies. In addition to other standards that may be established by these rules, a bank may not invest more than 10% of its total capital in a securities subsidiary. For purposes of that determination, total capital shall be calculated in accordance with all other applicable statutes and rules of the commissioner, including the effect of loans from the bank to the subsidiary, together with capital standards established by the Federal Deposit Insurance Corporation. Every loan made by the bank to a securities subsidiary shall comply with applicable state and federal laws. In all cases, each subsidiary shall maintain separate corporate and financial records.
- (5) Notwithstanding Subsection (4), a bank may enter into a networking agreement with a registered broker-dealer for the provision of brokerage services to the bank's customers on the bank's premises without the need to comply with Subsection (4), (6), or (7).
- (6) The securities activities authorized by this section may be conducted from an authorized banking office or from a separate office of a subsidiary, and may be offered to customers in this state or in any other state, territory, or country, except to the extent such activities are limited or prohibited by the laws of the other state, territory, or country.
- (7) Before undertaking any of the direct or indirect securities activities permitted under this section, except those authorized by Subsection (2)(a), a bank shall apply to the commissioner. The commissioner shall render a decision of approval, conditional approval, or disapproval within 60 days from the date of receiving the application. Public notice is not required for any hearing on the application that may be held. The commissioner shall satisfy himself before approving the application that the bank possesses the managerial and financial resources necessary to conduct the securities activities safely and soundly.

- (8) In conducting securities activities, a bank shall in all respects comply, and cause its securities subsidiary to comply, with the Utah Uniform Securities Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and other applicable statutes, regulations, and rules.
- (9) In connection with each customer for which a bank or its securities subsidiary shall act as agent or broker, the bank or the subsidiary, as applicable, shall give a written disclosure to its customer prior to closing any single transaction or establishment of an account contemplating a series of transactions. The disclosure statement shall be in legible print and shall be in substantially the form shown in Subsection (9)(a) with respect to the bank and in Subsection (9)(b) with respect to any securities subsidiary.

(a)

DISCLOSURE STATEMENT

The services offered by the securities department of this bank are offered to its customers without regard to any other banking relationship. By signing below the customer acknowledges receipt of this Disclosure Statement and agrees that any contract for securities services is completely voluntary, and the selection of this bank for securities services has not been required by any other business relationship or account with the bank.

_____ (month/day/year).

CUSTOMER:

(b)

DISCLOSURE STATEMENT

_____ (name of securities agency subsidiary) is a subsidiary of _____ (name of bank). The services offered by _____ (name of subsidiary) are offered to its customers without regard to any separate banking relationship with _____ (name of bank). By signing below the customer acknowledges receipt of this Disclosure Statement and agrees that any contract for services with _____ (name of subsidiary) is completely voluntary and the selection of _____ (name of subsidiary) for securities services has not been required by any business relationship with its parent bank.

_____ (month/day/year).

CUSTOMER:

Amended by Chapter 75, 2000 General Session

7-3-10 Organization -- Powers, rights, and privileges of banking corporation -- Other business activities.

- (1) A bank chartered under this chapter shall be:
 - (a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
 - (b) subject to Section 7-1-810, including the requirement that the bank be an S Corporation immediately before becoming a limited liability company, a limited liability company created under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.
- (2) A bank has all the rights, privileges, and powers necessary or incidental to carrying on the business of banking in addition to the powers granted:

- (a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
 - (b) subject to Section 7-1-810, if the bank is a limited liability company, under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.
- (3) The commissioner may, by rule or order, determine that necessary or incidental rights, privileges, and powers include:
- (a) the rights, privileges, and powers held by national banks; or
 - (b) other business activities so long as the commissioner's determination is not inconsistent with the rules, regulations, or other actions of the board of governors of the Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12 U.S.C. Sec. 1843(c)(8).
- (4) The commissioner shall implement this section in a manner consistent with the purposes set forth in Section 7-1-102.

Amended by Chapter 281, 2018 General Session

7-3-12 Prohibited investments and loans.

- (1)
- (a) Except as provided in Subsection (2), a bank may not make an investment or loan described in Subsection (1)(b) if the aggregate of the investments and loans described in Subsections (1)(b)(i) and (ii) plus any indebtedness incurred by any corporation holding the premises of the bank which is an affiliate of the bank, exceeds the greater of:
 - (i) the amount of the capital stock and surplus of the bank; or
 - (ii) 50% of the total capital accounts of the bank.
 - (b) If an investment or loan will violate Subsection (1)(a), a bank may not:
 - (i) invest in its own premises including furniture, fixtures and equipment, or in the stock, bonds, debentures, or other obligations of any corporation holding the premises of the bank; or
 - (ii) make loans to or upon the security of the stock of any corporation holding the bank's premises.
- (2) A bank may make an investment or loan prohibited under Subsection (1) with the prior written approval of the commissioner if the bank can demonstrate reasonable need for the investment or loan to the commissioner.

Amended by Chapter 91, 1997 General Session

7-3-13 Changes in articles of incorporation restricted.

No change shall be made in the articles of incorporation of any bank if the change would result in the impairment of the rights, remedies, or securities of depositors and other creditors of the bank.

Enacted by Chapter 16, 1981 General Session

7-3-15 Dividends allowed -- Surplus requirements.

- (1) The board of directors of a bank may declare a cash or stock dividend out of the net profits of the bank after providing for all expenses, losses, interest, and taxes accrued or due from the bank, as it shall judge expedient.

- (2) Before any dividend is declared pursuant to Subsection (1), not less than 10% of the net profits of the bank for the period covered by the dividend shall be carried to a surplus fund until the surplus shall amount to 100% of its capital stock.
- (3) Under this section, any amounts paid into a fund for the retirement of any debenture capital or preferred stock of the bank from its net earnings for the period covered by the dividend shall be considered an addition to its surplus fund if, upon the retirement of the debenture capital or preferred stock, the amount paid into the retirement fund for the period may be properly carried to the surplus fund of the bank. In this case the bank shall be obligated to transfer to the surplus fund the amount paid into the retirement fund.

Amended by Chapter 97, 2014 General Session

7-3-18 Real estate acquisition, holding, and conveyance.

A bank may purchase, hold, and convey real estate, other than bank premises, only for those purposes and in a manner prescribed by commissioner by regulation. Such regulations may not be more restrictive than the laws and regulations applicable to acquisition and holding of real estate by national banks.

Amended by Chapter 8, 1983 General Session

7-3-19 Limitations on loans and extensions of credit.

- (1) The total loans and extensions of credit, including credit exposure to a derivative transaction, by a bank to a person outstanding at one time and not fully secured, as determined in a manner consistent with Subsection (2), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's total capital.
- (2)
 - (a) The total loans and extensions of credit, including credit exposure to a derivative transaction, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding may not exceed 10% of the total capital of the bank.
 - (b) The limitation of Subsection (2)(a) is separate from and in addition to the limitation described in Subsection (1).
- (3)
 - (a) The limitations contained in Subsections (1) and (2) are subject to exceptions the commissioner may prescribe by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) A rule made under this section may not be inconsistent with law and regulations applicable to loan restrictions on national banks.
- (4)
 - (a) The commissioner may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define the following terms as used in this section:
 - (i) "credit exposure to a derivative transaction";
 - (ii) "derivative";
 - (iii) "loans and extensions of credit"; and
 - (iv) "person".
 - (b) The definitions described under Subsection (4)(a) may not be inconsistent with those applicable to national banks.

Amended by Chapter 194, 2012 General Session

7-3-20 Bank acquiring, holding, or accepting as collateral its own stock.

- (1) A bank may not accept as collateral or acquire its own stock except when the taking of the collateral or acquisition of the stock is necessary to prevent loss upon a debt previously contracted in good faith.
- (2) If a bank acquires stock as permitted under Subsection (1), the bank shall sell the stock within 12 months from the date of the bank's acquisition.
- (3) The value of all the stock held after acceptance or acquisition may not exceed 10% of the total capital of the bank.

Amended by Chapter 97, 2014 General Session

7-3-21 Stock ownership by banks.

- (1) A bank may purchase, own and hold, and sell or otherwise dispose of:
 - (a) shares of the Federal Reserve Bank of the Twelfth Federal Reserve District;
 - (b) the stock of a corporation organized under the laws of the United States for purposes similar to those of the federal reserve banks or the Federal Deposit Insurance Corporation;
 - (c) shares of the Federal National Mortgage Association;
 - (d) the stock of a safe deposit company;
 - (e) the stock of a corporation owning the banking house in which any place of business of the bank is located;
 - (f) the stock of a bank service corporation performing services for the bank;
 - (g) the stock of a corporation acquired by the bank in satisfaction of or on account of debts previously contracted in the course of the bank's business;
 - (h) the stock of a foreign banking corporation;
 - (i) the stock of a corporation authorized under Title IX of the Housing and Urban Development Act of 1968;
 - (j) the stock of the Government National Mortgage Association authorized under 12 U.S.C. Sec. 1716 et seq.;
 - (k) the stock of a charitable foundation;
 - (l) the stock of a community development corporation;
 - (m) the stock of bankers' banks; and
 - (n) the stock of an agricultural credit corporation.
- (2) A bank may invest in a small business investment company to the same extent allowed federally chartered banks.
- (3) Unless expressly authorized by this chapter, a bank may not purchase or own the stock of any other corporation except in a fiduciary capacity.

Amended by Chapter 97, 2014 General Session

7-3-22 Certificates and evidences of deposit binding -- Issuance of items intended to circulate as money prohibited.

All certificates or evidences of deposit made by the proper officers of any bank bind the bank with or without its corporate seal affixed. No bank shall issue any bill, note, or certificate intended to circulate as money.

Enacted by Chapter 16, 1981 General Session

7-3-24 Certification of check.

It shall be unlawful for any bank to certify any check drawn upon the bank unless the person drawing the check has on deposit with the bank at the time the check is certified an amount of money equal to the amount specified in the check.

Enacted by Chapter 16, 1981 General Session

7-3-25 Bad debts.

All demand and matured debts due to any bank on which interest is past due and has not been paid for a period of six months, unless they are well secured and in process of collection, are considered bad debts and shall be charged off to the reserve for loan losses account.

Amended by Chapter 200, 1994 General Session

7-3-26 Overdraft as asset.

An overdraft of more than 90 days' standing may not be allowed as an asset of a bank, unless amply secured and in the process of collection.

Amended by Chapter 8, 1983 General Session

7-3-28 Capital notes or debentures.

- (1) Any bank, with the prior written approval of the commissioner and the authorization by resolution of its board of directors may issue its convertible or nonconvertible capital notes or debentures. The issuance may be in the amounts, for the term, and contain provisions as may be approved by the commissioner.
- (2) All such notes or debentures shall be subordinated to the claims of depositors and other creditors.
- (3) The total amount of outstanding capital notes or debentures of any bank may not exceed such limitations as the commissioner may by regulation prescribe for the protection of depositors. The limitations prescribed may not be more restrictive than those prescribed for national banks.
- (4) The amount of such outstanding capital notes or debentures not maturing within one year shall be added to the capital of the issuing bank for the purpose of determining the maximum amount that may be loaned to a single borrower by such bank as provided in this chapter.
- (5) The commissioner may prescribe regulations for the protection of the bank's depositors and shareholders as, in the judgment of the commissioner, will effectuate the purposes of this section.

Amended by Chapter 8, 1983 General Session

7-3-30 Board of directors to manage business -- Residency of directors.

The business and affairs of a corporation conducting a banking business shall be managed by its board of directors. Directors are not required to be residents of this state or shareholders of the corporation unless its articles of incorporation or bylaws so require.

Enacted by Chapter 16, 1981 General Session

7-3-31 Oath of bank directors.

When a person is appointed or elected to be a director of a bank, that person shall take an oath promising to diligently carry out the duties required of a director, to honestly administer the affairs of the bank, and not to knowingly violate or wilfully permit the violation of any of the provisions of law applicable to the bank. The oath shall be subscribed by the director and shall be immediately filed in the office of the commissioner.

Enacted by Chapter 16, 1981 General Session

7-3-32 Meetings of board of directors -- Reports -- Records -- Loans to officers, directors and principal shareholders.

- (1) In this section "principal shareholder" means any officer, director, or person who directly or indirectly owns, controls, or has the power to vote more than 10% of any class of voting securities of the bank.
- (2) The board of directors of every bank shall hold at least one regular meeting every three months. The board shall designate an officer or officers of the bank to prepare and submit reports to the board at every regular quarterly meeting in such detail as the board may direct. Such reports shall include pertinent information on the loans and investments, the transactions with affiliates, and the lines of credit and acquisitions of real estate made during the preceding quarter or since the last report. It shall also include information on delinquent loans, other possible losses, and such other information as the regulations of the department may require.
- (3) At regular intervals at least twice each year, a report shall be made to the board of:
 - (a) the aggregate amount of all extensions of credit by the bank to its officers, directors, and principal shareholders and their related interests; and
 - (b) all extensions of credit from a correspondent bank of the bank to an executive officer or principal shareholder of the bank, since the last preceding report. The board of directors shall make the reports part of the record of the meeting, and the record shall show its action.

Amended by Chapter 177, 1990 General Session

7-3-33 Examination of affairs by board of directors -- Purposes -- Frequency -- Report filed in bank records.

- (1) Except as otherwise expressly provided in this chapter, it shall be the duty of the board of directors of every bank to examine or cause to be examined fully the books, papers, and affairs of the bank, and particularly the loans, discounts, and overdrafts thereof with a special view of ascertaining the value and security thereof and of the collateral security, if any, given in connection therewith, and to inquire into such other matters as the commissioner of financial institutions or bank examiner may require.
- (2) The examination shall be made not less frequently than once within an 18-month period and at such other times as the commissioner may require.
- (3) Within 30 days after the completion of the examination a report in writing thereof shall be made and placed on file with the records of the bank and shall be subject to examination by the commissioner or bank examiner.

Amended by Chapter 20, 1995 General Session

7-3-34 Contents of examination report of board of directors -- Failure to make and file report as misdemeanor.

The report required by Subsection 7-3-33(3) shall contain a statement of the assets and liabilities of the bank as shown by its books, and any deductions for the assets or additions to the liabilities which the directors, an examining committee, or examiner after the examination, may recommend. It shall also contain a detailed statement of loans, if any, which in their opinion are worthless or doubtful, together with their reasons for so regarding them, also a statement of loans made on collateral security which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if without market value, a statement of that fact and its actual value as near as it is possible to ascertain. The report shall also contain a statement of overdrafts with the names of the persons owing the same and the amounts of those they consider worthless or doubtful, and a full statement of other matters which affect the solvency and soundness of the bank. If the directors of any bank wilfully fail to make and file, or cause to be made and filed, the examination and report in the manner and within the time specified, each director of the bank shall be guilty of a class C misdemeanor.

Enacted by Chapter 16, 1981 General Session

7-3-35 Examinations in lieu of directors' examination -- Report filed with board minutes.

- (1) With the approval of the commissioner, and under rules and regulations prescribed by him, any examination made during an 18-month period by the department, the applicable federal reserve bank or the Federal Deposit Insurance Corporation, or a certified audit prepared by an independent certified public accountant may be substituted for the directors' examination required under Section 7-3-33.
- (2) If an examination by the department, the applicable federal reserve bank, or the Federal Deposit Insurance Corporation or an audit by a certified public accountant, is substituted for the directors' examination, the board of directors of the examined bank, or an examining committee appointed by the board shall prepare and file with the minutes of the board a detailed written report of the findings and recommendations based upon the examination. The report shall be in addition to any other requirements prescribed by the commissioner.

Enacted by Chapter 16, 1981 General Session

7-3-36 Loans to officers, directors and stockholders.

A bank may lend its funds or extend credit to any executive officer or director of the bank or to any person who directly or indirectly owns, controls, or has the power to vote 10% or more of any class of voting securities of the bank only in the manner and to the extent that the commissioner may prescribe by regulation. Any limitations imposed by the commissioner under this section may not be more restrictive than those prescribed by regulations issued by the bank's federal supervisory or insuring agency.

Amended by Chapter 8, 1983 General Session

7-3-39 Shareholders' right to examine bank records -- Records as to a particular customer.

Every shareholder of a bank shall have the right to examine the books and records of the bank as provided in Sections 16-10a-1601 through 16-10a-1604. Access to records pertaining solely to the deposits, borrowings, or other financial transaction of a particular customer shall be allowed to a shareholder of the bank upon the following conditions:

- (1) a written request for such access is submitted to the board of directors of the bank stating its purpose and necessity;
- (2) the board denies such request;
- (3) the shareholder files a petition with a court of competent jurisdiction requesting an order granting such access;
- (4) after hearing upon not less than 10 days' written notice to the bank and to the particular person whose records are involved, the court finds that the request for access is made in good faith and it is necessary to protect a legitimate interest of a shareholder;
- (5) the court orders that the records of the bank pertaining to the particular customer be made available subject to such conditions as the court considers appropriate to protect the privacy of the customer; and
- (6) the person seeking to inspect or obtain copies of such records reimburses the bank for the costs of search, retrieval, and reproduction of such records. The bank shall have no liability to the customer in providing to the shareholder of the bank access to such records in accordance with the terms and conditions of the order of the court.

Amended by Chapter 277, 1992 General Session

7-3-40 Board of Bank Advisors.

- (1) There is created a Board of Bank Advisors consisting of five members to be appointed by the governor as follows:
 - (a) each member of the board shall be an individual who is familiar with and associated with banks organized under this chapter; and
 - (b) at least three of the members of the board shall be individuals who:
 - (i) have had three or more years experience as a bank executive officer; and
 - (ii) are selected from a list submitted to the governor by an association in this state representing commercial banks.
- (2)
 - (a) The board shall meet quarterly.
 - (b) Subject to Subsection (2)(a), meetings of the board shall be held on the call of the chair.
- (3) The members of the board shall elect the chair of the board each year from the membership of the advisory board by a majority of the members present at the board's first meeting each year.
- (4)
 - (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (5) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed for the unexpired term.
- (6) All members shall serve until their successors are appointed and qualified.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) A majority of the members of the board shall constitute a quorum.

- (9) The board has the duty to advise the governor and commissioner on problems relating to banks organized under this chapter and to foster the interest and cooperation of banks in the improvement of their services to the people of the state.

Amended by Chapter 286, 2010 General Session

Chapter 5 Trust Business

7-5-1 Definitions -- Allowable trust companies -- Exceptions.

- (1) As used in this chapter:
- (a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.
 - (b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in Subsection 75-1-201(55).
 - (c) "Trust business" does not include the following means of holding money, assets, or other property:
 - (i) money held in a client trust account by an attorney authorized to practice law in this state;
 - (ii) money held in connection with the purchase or sale of real estate by a person licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah Insurance Department to act as an escrow agent in this state;
 - (iv) money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;
 - (v) money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including money held by an escrow agent for payment of taxes or insurance;
 - (vi) money and other assets held in trust on an occasional or isolated basis by a person who does not represent that the person is engaged in the trust business in Utah;
 - (vii) money or other assets found by a court to be held in an implied, resulting, or constructive trust;
 - (viii) money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:
 - (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure; and

- (B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner, chartered financial consultant, certified financial analyst, or similar designation suitable to the court, that evidences the conservator's, trustee's, or other fiduciary's professional competence to manage financial matters;
 - (ix) money or other assets held by a credit services organization operating in compliance with Title 13, Chapter 21, Credit Services Organizations Act;
 - (x) money, securities, or other assets held in a customer account in connection with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or
 - (xi) money, assets, and other property held in a business trust for the benefit of holders of certificates of beneficial interest if the fiduciary activities of the business trust are merely incidental to conducting business in the business trust form.
- (d) "Trust company" means an institution authorized to engage in the trust business under this chapter. Only the following may be a trust company:
- (i) a Utah depository institution or its wholly owned subsidiary;
 - (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;
 - (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);
 - (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and
 - (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.
- (2) Only a trust company may engage in the trust business in this state.
- (3) The requirements of this chapter do not apply to:
- (a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;
 - (b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or
 - (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

Amended by Chapter 364, 2013 General Session

7-5-2 Permit required to engage in trust business -- Exceptions.

- (1) No trust company shall accept any appointment to act in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under order or judgment of any court or by authority of any law of this state or as trustee for any purpose permitted by law or otherwise engage in the trust business in this state, unless and until it has obtained from the commissioner a permit to act under this chapter. This provision does not apply to any bank or other corporation authorized to engage and lawfully engaged in the trust business in this state before July 1, 1981.
- (2) Nothing in this chapter prohibits:

- (a) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Chapter 10a, Utah Revised Business Corporation Act, from acting as trustee of any employee benefit trust established for the employees of the corporation or the employees of one or more other corporations affiliated with the corporation;
- (b) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or religious organization from acting as a trustee for that organization or members of that organization but not offering trust services to the general public;
- (c) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Chapter 10a, Utah Revised Business Corporation Act, from holding in a fiduciary capacity the controlling shares of another corporation but not offering trust services to the general public; or
- (d) any depository institution from holding in an agency or fiduciary capacity individual retirement accounts or Keogh plan accounts established under Section 401(a) or 408(a) of Title 26 of the United States Code.

Amended by Chapter 189, 2014 General Session

7-5-3 Application for authorization to engage in trust business -- Criteria for granting -- Authority of trust company.

- (1) A person seeking authorization to become a trust company and engage in the trust business in this state shall file an application with the commissioner in the manner provided in Section 7-1-704, and shall pay the fee prescribed in Section 7-1-401.
- (2) The commissioner shall, in deciding whether or not to approve the application, take into account:
 - (a) the character and condition of the applicant's assets;
 - (b) the adequacy of its capital;
 - (c) its earnings record;
 - (d) the quality of its management;
 - (e) the qualifications of any person proposed to be an officer in charge of the trust operations;
 - (f) the needs of the community for fiduciary services;
 - (g) the volume of business that the applicant will probably do; and
 - (h) any other relevant facts and circumstances, including the availability of legal counsel to advise and pass upon matters relating to the trust business.
- (3) The commissioner may not apply criteria making it more difficult for a state chartered depository institution to obtain approval to engage in the trust business than for a federally chartered depository institution of the same class.
- (4) The commissioner may impose such conditions when authorizing a person to engage in the trust business as he considers appropriate to protect the public interest.
- (5) Upon receiving authorization from the commissioner to become a trust company and engage in the trust business, the trust company is qualified to act as fiduciary in any capacity without bond.

Amended by Chapter 200, 1994 General Session

7-5-4 Withdrawal from trust business.

Any trust company which desires to withdraw from and discontinue doing a trust business shall furnish to the commissioner satisfactory evidence of its release and discharge from all the

obligations and trusts undertaken by it, and after the company has furnished that evidence the commissioner shall revoke his certificate of authority to do a trust business previously issued to that trust company, and thereafter that trust company may not be permitted to use and may not use the word "trust" in its corporate name or in connection with its business, nor undertake the administration of any trust business.

Amended by Chapter 378, 2010 General Session

7-5-5 Revocation of trust authority -- Procedure.

- (1)
 - (a) The commissioner may issue and serve upon a trust company a notice of intent to revoke the authority of the trust company to exercise the powers granted by this chapter, if, in the commissioner's opinion, the trust company:
 - (i) is unlawfully or unsoundly exercising the powers granted under this chapter;
 - (ii) has unlawfully or unsoundly exercised the powers granted under this chapter;
 - (iii) has failed, for a period of five consecutive years, to exercise the powers granted by this chapter;
 - (iv) fails or has failed to comply with requirements upon which its permit is conditioned; or
 - (v) fails or has failed to comply with any rule of the commissioner.
 - (b) The notice shall:
 - (i) contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply; and
 - (ii) fix the time and place at which a hearing will be held to determine whether an order revoking authority to execute those powers should issue against the trust company.
- (2)
 - (a) If the trust company or its representative does not appear at the hearing, the commissioner may consider the trust company to be in default, and may issue a revocation order.
 - (b) If default has occurred, or if upon the record made at any hearing the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner shall issue and serve upon the trust company an order:
 - (i) prohibiting it from accepting any new or additional trust accounts; and
 - (ii) revoking its authority to exercise any powers granted under this chapter.
 - (c) Any order issued under this section permits the trust company to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.
- (3) A revocation order shall become effective 30 days after service of the order upon the trust company and shall remain effective and enforceable, unless it is stayed, modified, terminated, or set aside by action of the commissioner or by judicial review as provided for in Section 7-1-714.

Amended by Chapter 9, 2001 General Session

7-5-6 Confidentiality of communications and writings concerning trust -- Actions to protect property or authorized under probate laws not precluded.

Any trust company exercising the powers and performing the duties described in this chapter shall keep inviolate all communications and writings made to or by that trust company relating to the existence, condition, management or administration of any agency or fiduciary account confided to it and no creditor or stockholder of any such trust company shall be entitled to disclosure or knowledge of any such communication or writing, except that the directors, president,

vice president, manager, treasurer, and trust officers, and any employees assigned to work on the trust business, and the attorney or auditor employed by it shall be entitled to knowledge of any such communication or writing and except that in any suit or proceeding relating to the existence, condition, management or administration of the account, the court in which the suit is pending may require disclosure of any such communication or writing. A trust company is not, however, precluded from filing an action in court to protect trust account property or as authorized under Title 75, Utah Uniform Probate Code.

Amended by Chapter 189, 2014 General Session

7-5-7 Management and investment of trust money.

- (1) Money received or held by a trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and may not be held uninvested any longer than is reasonably necessary.
- (2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, money held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for the investments according to Title 75, Utah Uniform Probate Code, unless the underlying instrument provides otherwise.
- (3)
 - (a) Money received or held as agent or fiduciary by any trust company which is also a depository institution, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the trust company shall deliver to the trust department or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating such a fiduciary or managing agency account expressly provides that money may be deposited to the commercial or savings department of the trust company, then the money may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company that deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.
 - (b) Money received or held as agent or fiduciary by a trust company, whether for investment or distribution, may be deposited in an affiliated depository institution. Whenever the money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the depository institution shall deliver to the trust company or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency. However, if the instrument creating the fiduciary or managing agency account expressly permits money to be deposited in the affiliated depository institution, the money may be so deposited without setting aside collateral securities as required under this section and deposits in the event of insolvency of the depository institution shall be treated as other general deposits are treated. A trust company

that deposits trust money in an affiliated depository institution is liable for interest on the deposits only at the rates, if any, paid by the depository institution on deposits of like kind.

- (4) In carrying out all aspects of its trust business, a trust company shall have all the powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to trustees, whether or not the trust company is acting as a trustee as defined in Title 75, Utah Uniform Probate Code.
- (5) Nothing in this section may alter, amend, or limit the powers of a trust company acting in a fiduciary capacity as specified in the particular instrument or order creating the fiduciary relationship.

Amended by Chapter 97, 2014 General Session

Amended by Chapter 189, 2014 General Session

7-5-8 Segregation of trust assets -- Books and records required -- Examination -- Trust property not subject to claims or debts against trust company.

A trust company exercising the powers to act as an agent or fiduciary under this chapter shall segregate all assets held in any agency or fiduciary capacity from the general assets of the company and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this chapter. These books and records shall be open to inspection by the commissioner and shall be examined by him or by examiners appointed by him as provided in Chapter 1, General Provisions, or examined by other appropriate regulating agencies or both. Property held in an agency or fiduciary capacity by a trust company is not subject to claims or debts against the trust company.

Amended by Chapter 189, 2014 General Session

7-5-9 Registration of investment in name of nominee -- Records -- Possession of investment.

- (1) A trust company may cause any security, as defined in Section 75-1-201, held in its agency or fiduciary capacity to be registered and held in the name of a nominee or nominees of the trust company. The trust company shall be liable for the acts of any such nominee with respect to any investment so registered. Investments other than securities held in the name of a nominee on June 30, 1981, may continue to be held in that manner.
- (2) The records of the trust company shall at all times show the ownership of any such investment, which investment shall be in the possession or control of the trust company and be kept separate and apart from the assets of the trust company.

Amended by Chapter 93, 2010 General Session

7-5-10 Lending trust funds to trust company, officer, director, or employee as felony.

Unless expressly permitted in the instrument creating a trust account or by a person authorized to give that permission or by a court order as permitted in Section 75-7-802, no trust company shall lend to itself or to any officer or director or employee of the trust company any funds held in any trust account under the powers conferred in this chapter. Any officer, director or employee making such a loan, or to whom such a loan is made, is guilty of a third degree felony.

Amended by Chapter 89, 2004 General Session

7-5-11 Self-dealing with trust property -- Own stock as trust property -- Policies for dealing with trust securities.

- (1) Except as provided in Section 7-5-7, in Title 75, Utah Uniform Probate Code, or as authorized under the instrument creating the relationship, a trust company may not invest funds held as an agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust company or any of its directors, officers or employees, nor shall a trust company sell property held as an agent or fiduciary to the company or to any of its directors, officers, or employees.
- (2) A trust company may retain and vote stock of the trust company or of any of its affiliates received by it as assets of any trust account or in any other fiduciary relationship of which it is appointed agent or fiduciary, unless the instrument creating the relationship otherwise provides.
- (3) Every trust company shall adopt written policies and procedures regarding decisions or recommendations to purchase or sell any security to facilitate compliance with federal and state securities laws. These policies and procedures, in particular, shall prohibit the trust company from using material inside information in connection with any decision or recommendation to purchase or sell any security.

Amended by Chapter 189, 2014 General Session

7-5-12 Directors' audit of trust business -- Report available to commissioner or examiners -- Examinations in lieu of audit.

A committee of the board of directors, exclusive of any active officers of the trust department, of every trust company authorized to engage in the trust business in this state shall, at least once during a 15-month period, make a suitable audit of the trust business operations of the institution or cause a suitable audit to be made by auditors responsible only to the board of directors and shall ascertain whether the trust business operations of the institution have been administered in accordance with law and sound fiduciary principles. A report of the audit, together with the action taken thereon, shall be made available to the commissioner, his examiners, or the examiners of other trust company regulating agencies upon request. An examination by the state or other trust company regulating agencies or both made during the same period may be substituted for this audit.

Amended by Chapter 9, 1983 General Session

7-5-13 Collective investment funds.

- (1) A person authorized to engage in the trust business in this state may:
 - (a) establish collective investment funds that authorize participation by fiduciary or trust accounts of the trust company, its affiliates, or both; and
 - (b) participate in collective investment funds established by an affiliate of the trust company, if:
 - (i) the affiliate is authorized under the laws of its chartering authority to establish a collective investment fund in which its affiliates may participate; and
 - (ii) the plan establishing the collective investment fund specifically authorized the participation.
- (2) Funds held by a trust company may be invested collectively in a collective investment fund in accordance with the rules prescribed by the appropriate governmental regulatory agency or agencies, if this investment is not specifically prohibited under the instrument, judgment, decree, or order creating the regulatory relationship.
- (3) Unless ordered to do so by a court of competent jurisdiction, a trust company operating collective investment funds is not required to render a court accounting with regard to those

funds; but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

(4) This section applies to all relationships in existence on or after May 1, 1989.

Amended by Chapter 267, 1989 General Session

7-5-14 Mergers, consolidations, acquisitions, transfers, or reorganizations involving entities engaged in trust business -- Succession of rights and duties -- Petition for appointment of another trust company.

(1) As used in this section:

(a) "Eligible trust company" means any of the following that is authorized under this chapter or the laws of the United States to engage in the trust business in this state:

- (i) a trust company;
- (ii) a depository institution; or
- (iii) a corporation.

(b) "Reorganization" includes:

- (i) the creation by a trust company of a subsidiary corporation that is:
 - (A) wholly owned by that trust company; and
 - (B) organized solely for the purpose of conducting all or any portion of the trust business of that trust company; or
- (ii) any merger or other combination between a trust company and:
 - (A) a wholly owned trust company subsidiary of that trust company; or
 - (B) a wholly owned trust company subsidiary of the depository institution holding company which owns or controls that trust company.

(2) Notwithstanding any provision of law to the contrary, an eligible trust company may, subject to Sections 7-1-702, 7-1-704, and 7-1-705:

(a)

- (i) merge or consolidate with another eligible trust company;
- (ii) acquire control of another eligible trust company;
- (iii) acquire all or a portion of the assets and trust business of another eligible trust company;
- (iv) assume all or any portion of the liabilities of another eligible trust company;
- (v) transfer control to another eligible trust company;
- (vi) transfer all or a portion of its assets and trust business to another eligible trust company; or
- (vii) transfer all or a portion of its liabilities to another eligible trust company; or

(b) reorganize.

(3)

(a) Subject to Subsection (3)(b), upon final approval by the commissioner of any merger, consolidation, acquisition of control, acquisition of assets, assumption of liabilities, or reorganization, and upon written notice of this approval to all persons entitled to and then receiving trust accountings from the transferring or reorganizing trust company, the resulting or acquiring trust company shall, without court proceedings or a court order, succeed to all rights, privileges, duties, obligations, and undertakings under all trust instruments, agency and fiduciary relationships and arrangements, and other trust business transferred and acquired in the manner authorized by this section.

(b) Except as provided otherwise in the relevant trust instrument, any interested person may, not more than 30 days after receipt of written notice of the merger, consolidation, acquisition, transfer, or reorganization, petition any court of competent jurisdiction to appoint another or succeeding trust company with respect to any agency or fiduciary relationship affecting

that interested person, and until another or succeeding trust company is so appointed, the acquiring or resulting trust company is entitled to act as agent or fiduciary with respect to the agency or fiduciary relationship.

Amended by Chapter 277, 2007 General Session

7-5-15 Assets of trust company in possession of the commissioner.

With respect to a trust company in the possession of the commissioner under Chapter 2, Possession of Depository Institution by Commissioner, notwithstanding any law to the contrary, the assets held by the trust company in a fiduciary capacity as a part of its trust business, as defined in Section 7-5-1, are not subject to the claims of any secured or unsecured creditor of the trust company.

Amended by Chapter 189, 2014 General Session

**Chapter 8
Industrial Banks**

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

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

(2)

(a) Each person organized to conduct the business of an industrial bank in this state shall be organized under:

(i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

(ii) in accordance with Section 7-1-810 or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.

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

(3)

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

(b) All rights, privileges, powers, duties, and obligations of a limited liability company authorized to conduct business as an industrial bank and its members and managers shall be governed by Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, except as otherwise provided in this title.

(4)

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

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

Amended by Chapter 281, 2018 General Session

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

- (1)
 - (a) An industrial bank may not accept as collateral, or be a purchaser of, shares of its own capital stock, unless taking the shares as collateral or purchasing them is necessary to prevent loss upon a debt previously contracted in good faith.
 - (b) All shares of stock acquired under this Subsection (1) by the industrial bank through any purchase, foreclosure, judgment, or otherwise shall be sold within 12 months from the date of acquisition.
 - (c) The par value of all the shares held after acceptance or purchase may not exceed 10% of the capital and surplus of the industrial bank.
- (2)
 - (a) Each industrial bank accepting or holding deposits shall maintain the minimum amount of capital required by its federal deposit insurer.
 - (b) The commissioner may require a greater amount of capital if the commissioner determines that it is necessary to protect the interests of:
 - (i) the depositors and other customers of the industrial bank; and
 - (ii) the public.

Amended by Chapter 92, 2004 General Session

7-8-7 Reports to commissioner.

Each industrial bank shall file reports of its condition in accordance with Section 7-1-318.

Amended by Chapter 92, 2004 General Session

7-8-11 Dividends.

- (1) The board of directors of an industrial bank may declare a dividend out of the net profits of the industrial bank after providing for all expenses, losses, interest, and taxes accrued or due from the industrial bank in accordance with this section.
- (2) The industrial bank shall transfer to a surplus fund at least 10% of its net profits before dividends for the period covered by the dividend, until the surplus reaches 100% of its capital stock.
- (3) Any amount paid from the industrial bank's net earnings into a fund for the retirement of any debenture capital or preferred stock for the period covered by the dividend is considered an addition to its surplus fund if, upon the retirement of the debenture capital or preferred stock, the amount paid into the retirement fund for the period may be properly carried to the surplus fund of the industrial bank. In this case the industrial bank shall transfer to the surplus fund the amount paid into the retirement fund.

Amended by Chapter 97, 2014 General Session

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

An industrial bank may purchase, hold, and convey real estate, other than premises used in the conduct of its business, only for the purposes and in a manner prescribed by rule.

Amended by Chapter 92, 2004 General Session

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

- (1) An industrial bank may invest in premises, equipment, and other property used in conducting its own business, as the board of directors may approve by resolution. This property may include:
 - (a) real property and any interest in real property, furniture, fixtures, and equipment for use in carrying on its own business; and
 - (b) the stock, bonds, debentures, or other obligations of any subsidiary or affiliate whose exclusive activity is the ownership and management of property used in conducting the industrial bank's business.
- (2) The amount of these investments may not exceed 50% of the industrial bank's total capital, unless the commissioner approves a higher amount in writing.

Amended by Chapter 92, 2004 General Session

7-8-15 Bad debts.

- (1) All demand and matured debts due to any industrial bank on which interest is past due and has not been paid for a period of six months, unless they are well secured and in the process of collection, are considered bad debts and shall be charged off to the profit and loss account.
- (2) The industrial bank shall maintain in its files documentation to support its evaluation of the security and monthly reports of its collection efforts and a plan of collection.

Amended by Chapter 92, 2004 General Session

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

- (1) Each industrial bank holding company shall register with the department by filing a registration statement in a form prescribed by the commissioner. The statement shall include:
 - (a) the name, address, and principal occupation of each officer and director of the registrant;
 - (b) a statement of financial condition as of a date not more than six months prior to the date of registration;
 - (c) a certificate of good standing in the state in which the registrant is incorporated; and
 - (d) evidence that the company is authorized to transact business in this state.
- (2)
 - (a) A person may not form an industrial bank holding company, unless it:
 - (i) is authorized to do so by the commissioner; and
 - (ii) is registered with the department as provided in Subsection (1).
 - (b) An applicant for authorization to form a holding company shall file an application in a form prescribed by the commissioner by rule.
- (3) The commissioner may exempt an industrial bank holding company in whole or in part from registration if it is:
 - (a) a bank holding company or savings and loan holding company subject to federal regulation;
 - (b) a person that is a holding company only because the person owns or controls voting shares of an industrial bank or holding company acquired in connection with the underwriting of securities if the person holds these shares no longer than 120 days, unless the commissioner approves a longer period to permit their sale on a reasonable basis;
 - (c) a person exempt from the jurisdiction of the department under Section 7-1-502; or
 - (d) a person exempted in writing by the commissioner or by rule.

- (4) The commissioner may adopt rules with respect to industrial bank holding companies as are necessary to protect:
- (a) depositors;
 - (b) other creditors;
 - (c) the public; and
 - (d) the financial system of the state.

Amended by Chapter 92, 2004 General Session

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

- (1) A quorum of the board of directors of each industrial bank shall meet at least once each quarter.
- (2) Minutes of each meeting of the board of directors shall be:
- (a) kept by the secretary of the industrial bank; and
 - (b) maintained at the head office of the industrial bank.

Amended by Chapter 92, 2004 General Session

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

- (1) Except as provided in this section, the total loans and extensions of credit, including credit exposure to a derivative transaction, by an industrial bank to a person outstanding at any one time may not exceed 15% of the industrial bank's total capital.
- (2) Subsection (1) does not apply to an extension of credit that is subject to, or expressly exempted from, a federal statute or federal regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.
- (3) The commissioner may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (a) exempt from Subsection (1) a class of loans or class of extensions of credit, including credit exposure to a derivative transaction, that are adequately secured or are not otherwise a risk to the safe and sound operation of an industrial bank;
 - (b) define terms and phrases necessary to interpret and implement this section;
 - (c) adopt standards for aggregating or segregating loans to the same or different persons;
 - (d) describe records required to be maintained;
 - (e) require specific actions to be taken by an institution's board of directors or executive officers; and
 - (f) prescribe other actions necessary to interpret and implement this section.

Amended by Chapter 194, 2012 General Session

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

- (1) As used in this section, "industrial loan company" is a person that on March 17, 2004, is:
- (a) authorized to conduct business under this chapter; and
 - (b) not authorized to hold or receive deposits.
- (2) An industrial loan company may operate as an industrial bank under this chapter except that the industrial loan company:
- (a) may not hold or receive deposits without:
 - (i) the prior written approval of the commissioner; and

- (ii) obtaining insurance from the Federal Deposit Insurance Corporation or a successor federal deposit insurance entity;
 - (b) may not engage in any conduct authorized by this title that is conditioned on the industrial loan company being a depository institution without meeting the conditions described in Subsections (2)(a)(i) and (ii); and
 - (c) may not use a term listed in Subsection 7-1-701(3) in its name without meeting the conditions described in Subsections (2)(a)(i) and (ii).
- (3) If a person is not authorized to conduct business under this chapter on March 17, 2004, that person may not be considered an industrial loan company under this section.

Enacted by Chapter 92, 2004 General Session

Chapter 9 Utah Credit Union Act

7-9-1 Title.

This chapter is known as the "Utah Credit Union Act."

Amended by Chapter 200, 1994 General Session

7-9-2 Description of credit unions.

A credit union is a cooperative, nonprofit association, incorporated under this chapter to encourage thrift among its members, to create sources of credit at fair and reasonable rates of interest, and to provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.

Enacted by Chapter 16, 1981 General Session

7-9-3 Definitions.

As used in this chapter:

- (1)
 - (a) "Association" means a group of persons that:
 - (i) constitute the members of a formal association organized for:
 - (A) an identifiable interest;
 - (B) an identifiable purpose;
 - (C) a specific profession; or
 - (D) a specific occupation; or
 - (ii) are employed by a common employer.
 - (b) "Association" does not include a group of persons that is:
 - (i) identified or created primarily on the basis of a relationship between any person and:
 - (A) a consumer;
 - (B) a customer; or
 - (C) a client; or
 - (ii) created primarily for the purpose of expanding the membership in a credit union.
- (2) "Capital and surplus" means:
 - (a) shares;

- (b) deposits;
 - (c) reserves; and
 - (d) undivided earnings.
- (3) "Corporate credit union" means any credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.
- (4) "Credit union service organization" means an entity:
- (a) that provides any of the services listed in Subsection 7-9-59(2); and
 - (b) in which a credit union organized under this chapter holds an ownership interest.
- (5) "Deposits" means that portion of the capital paid into the credit union by members on which a specified rate of interest will be paid.
- (6) "Field of membership" means persons designated as eligible for credit union membership in accordance with:
- (a) Section 7-9-51 or 7-9-53; and
 - (b) the bylaws of the credit union.
- (7) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the member.
- (8)
- (a) "Member-business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for:
 - (i) a commercial purpose;
 - (ii) other business investment property or venture purpose; or
 - (iii) an agricultural purpose.
 - (b) "Member-business loan" does not include an extension of credit:
 - (i) that is fully secured by a lien on a one- to four- family dwelling that is the primary residence of a member;
 - (ii) that is fully secured by:
 - (A) shares or deposits in the credit union making the extension of credit; or
 - (B) deposits in other financial institutions;
 - (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of:
 - (A) the federal government;
 - (B) a state; or
 - (C) a political subdivision of a state; or
 - (iv) that is granted by a corporate credit union to another credit union.
- (9) "Nonexempt credit union" means a credit union that is a nonexempt credit union under Section 7-9-55.
- (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from which owners are permitted to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to other persons or to the owner.
- (11) "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

Amended by Chapter 327, 2003 General Session

7-9-5 Powers of credit unions.

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

- (1) make contracts;

- (2) sue and be sued;
- (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;
- (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;
- (5) incur and pay necessary and incidental operating expenses;
- (6) require an entrance or membership fee;
- (7) receive the funds of its members in payment for:
 - (a) shares;
 - (b) share certificates;
 - (c) deposits;
 - (d) deposit certificates;
 - (e) share drafts;
 - (f) NOW accounts; and
 - (g) other instruments;
- (8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures established by the board of directors, including drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;
- (9) charge fees for its services;
- (10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;
- (11) extend credit secured by real estate;
- (12)
 - (a) subject to Subsection (12)(b), make co-lending arrangements, including loan participation arrangements, in accordance with written policies of the board of directors with one or more:
 - (i) other credit unions;
 - (ii) credit union service organizations; or
 - (iii) other financial organizations; and
 - (b) make co-lending arrangements, including loan participation arrangements, in accordance with Subsection (12)(a) subject to the following:
 - (i) the credit union or credit union service organization that originates a loan for which co-lending arrangements are made shall retain an interest of at least 10% of the loan;
 - (ii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of the credit union to which the interest is sold;
 - (iii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union service organization an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of a credit union that holds an interest in the credit union service organization to which the interest is sold; and
 - (iv) a nonexempt credit union may not originate, participate in, or obtain any interest in a co-lending arrangement, including a loan participation arrangement, in violation of Section 7-9-58;

- (13) sell and pledge eligible obligations in accordance with written policies of the board of directors;
- (14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;
- (15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;
- (16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;
- (17) discount and sell notes and obligations;
- (18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;
- (19) invest funds as provided in this title and in its bylaws;
- (20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;
- (21)
 - (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes; and
 - (b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;
- (22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;
- (23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;
- (24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;
- (25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including individual retirement accounts as defined by Section 408, Internal Revenue Code;
- (26) purchase reasonable accident and health insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;
- (27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation including truth-in-lending and equal credit laws and as provided in its bylaws;
- (28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;
- (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:
 - (a) the participation is not inconsistent with the law and rules of the department; and
 - (b) any credit union participating in any system notifies the department as provided by law;
- (30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;
- (31) provide any act necessary to obtain and maintain membership in the credit union;
- (32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;
- (33) undertake other activities relating to its purpose as its bylaws may provide;

- (34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;
- (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; and
- (36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:
 - (a) be eligible for membership in the credit union; and
 - (b) become a member of the credit union.

Amended by Chapter 378, 2010 General Session

7-9-6 Formation of corporation to conduct credit union -- Approval of commissioner.

- (1)
 - (a) Ten or more incorporators belonging to the same group of 200 persons or more having a field of membership may, with the approval of the commissioner, form a corporation to conduct a credit union under:
 - (i) this chapter;
 - (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act; and
 - (iii) Chapter 1, General Provisions.
 - (b) This chapter takes precedence over conflicting provisions of other state law governing:
 - (i) the formation of the corporation; and
 - (ii) the duties and obligations of:
 - (A) the corporation;
 - (B) the corporation's officers; and
 - (C) the corporation's shareholders or members.
- (2) The commissioner may grant the approval referenced in Subsection (1) if the commissioner finds that:
 - (a) the proposed field of membership is favorable to the success of the credit union;
 - (b) the standing of the proposed membership will give assurance that its affairs will be administered in accordance with this chapter;
 - (c) the proposed credit union has a reasonable promise of financial viability; and
 - (d) formation of the credit union would not result in a substantial adverse financial impact on an existing credit union having the same or substantially the same field of membership.
- (3)
 - (a) Except as provided in Subsection (3)(b) and in addition to the requirements of Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.
 - (b) Notwithstanding Subsection (3)(a):
 - (i) if the proposed credit union has a field of membership that does not base eligibility on residence in a county, the persons seeking formation of the proposed credit union are not required to provide the notice required under Subsection 7-1-704(3); and
 - (ii) a credit union may not be required to obtain federal insurance if the credit union complies with Subsection 7-9-45(2).

Amended by Chapter 327, 2003 General Session

7-9-7 Forms furnished by commissioner.

The commissioner shall furnish all forms and blanks necessary for the formation of the credit union.

Enacted by Chapter 16, 1981 General Session

7-9-9 Amendment of articles of incorporation.

- (1) The articles of incorporation may be amended at meetings of the shareholders called for that purpose.
- (2) A notice of a meeting called for that purpose shall be given by mailing a copy thereof to each member at least 10 days prior to the date of the meeting or by giving notice as provided by the articles of incorporation and the bylaws of the credit union. Notice of meetings shall contain the proposed amendment.
- (3) A three-fourths vote of all members present shall be necessary to amend the articles.
- (4) No amendment shall be made without the approval of the commissioner.

Enacted by Chapter 16, 1981 General Session

7-9-10 Filing amendment.

The Division of Corporations and Commercial Code shall accept for filing an amendment to the articles of incorporation if it finds that the amendment conforms to law and has been approved by the commissioner.

Amended by Chapter 66, 1984 General Session

7-9-11 Bylaws and amendments to be approved.

- (1) A credit union may not receive payments on shares, deposits, or certificates, or make any loans or other transactions, until its bylaws have been approved in writing by the commissioner.
- (2) An amendment to a credit union's bylaws does not become operative until the amendment to the bylaws is approved by the commissioner.
- (3)
 - (a) If the amendment to the bylaws of a credit union expands the field of membership of a credit union as described in Subsection 7-9-52(1), the commissioner's approval of the amendment is subject to Section 7-9-52.
 - (b) If the bylaws or an amendment to the bylaws of a credit union adds an association to the field of membership of the credit union, the commissioner may require that the credit union provide written confirmation from the association that the association has agreed to be served by the credit union.

Amended by Chapter 327, 2003 General Session

7-9-12 Contents of bylaws.

The bylaws of a credit union shall specify at least the following:

- (1) the name of the credit union;
- (2) the purpose for which the credit union was formed;
- (3) a field of membership of the credit union that complies with Section 7-9-51 or 7-9-53;
- (4) the number of directors and procedures for their election;
- (5) the term of directors;

- (6) whether a credit manager, credit committee, or combination of both shall be responsible for credit functions of the credit union;
- (7) the duties of the officers;
- (8) the time of year of the annual meeting of members;
- (9) the manner in which members shall be notified of meetings;
- (10) the number of members which shall constitute a quorum at meetings;
- (11) the manner of amending;
- (12) the manner in which officers may act as surety; and
- (13) such other matters, rules, and regulations as the board of directors consider necessary.

Amended by Chapter 327, 2003 General Session

7-9-13 Fiscal year.

The fiscal year of the credit union shall end at the close of business on December 31 of each year.

Enacted by Chapter 16, 1981 General Session

7-9-14 Meetings.

- (1) The annual meeting of the credit union shall be held at such time and place as the bylaws prescribe.
- (2) Special meetings may be held as the bylaws prescribe.
- (3) Notice of all meetings of the credit union shall be given as the bylaws prescribe.
- (4) In the absence of any provisions in the bylaws, special meetings of the members of the credit union may be called by a majority of the members of the corporation.

Enacted by Chapter 16, 1981 General Session

7-9-15 Appeals from board of directors or committees.

Appeals from decisions of the board of directors, supervisory committee, or credit committee shall be made as the bylaws prescribe.

Enacted by Chapter 16, 1981 General Session

7-9-16 Members -- Eligibility -- Liability -- Grounds for closing account -- Denial of membership.

- (1) A person within the field of membership of a credit union may be admitted to membership, upon:
 - (a) payment of any required entrance or membership fee;
 - (b) payment for one or more shares; and
 - (c) compliance with this chapter and the bylaws of the credit union.
- (2) A member who is eligible for membership in a credit union at the time the member is admitted as a member but who is no longer in the field of membership of the credit union may retain membership in the credit union unless otherwise provided in the bylaws of the credit union.
- (3) A member of the credit union may not be held personally or individually liable for payment of the credit union's debts.
- (4) The credit union may close the account of any member whose actions have resulted in any financial loss to the credit union.

(5) Denial of membership is not considered a denial of credit.

Amended by Chapter 327, 2003 General Session

7-9-17 Membership officer -- Appointment -- Eligibility -- Function -- Appeals from.

- (1) One or more membership officers may be appointed by the board of directors.
- (2) A membership officer may approve applications for membership under conditions prescribed by the board of directors and the bylaws.
- (3) A membership officer shall be appointed from among the members of the credit union.
- (4) A president, vice president, or loan officer may not serve as a membership officer.
- (5) The membership officer authorized to approve membership shall submit to the board of directors at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, and other related information as the board or the bylaws may require.
- (6) A person denied membership by a membership officer may appeal the denial to the board of directors.

Enacted by Chapter 16, 1981 General Session

7-9-18 Expulsion of member.

- (1) The board of directors or board-designated representatives may expel from the credit union any member who has not carried out his engagements with the credit union, or neglected or refused to comply with the credit union board policies, provisions of this chapter, or of the credit union bylaws.
- (2) If the member whose expulsion is under consideration is a member of the board of directors or credit committee, the supervisory committee shall call a special meeting of the members to hear the facts and act upon the proposed expulsion.

Amended by Chapter 182, 1996 General Session

7-9-19 Payments to expelled members -- Liability of member not relieved by expulsion.

- (1) Except in the case of liquidation or dissolution, the amount paid in on shares or deposited by members who have been expelled shall be paid to them with all accrued interest, in the order of expulsion.
- (2) Payment shall be made only as funds become available.
- (3) All amounts due the credit union by the expelled member shall be deducted by the credit union before any amounts are paid to the expelled member.
- (4) Expulsion does not relieve a member from any liability to the credit union.

Amended by Chapter 378, 2010 General Session

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

- (1) At annual meetings the members shall elect from their number a board of directors consisting of an odd number of not less than five members.
- (2) The bylaws may provide balloting by:
 - (a) mail;
 - (b) ballot box; or
 - (c) both mail and ballot box.

- (3) Voting may not be by proxy.
- (4) A member of the board of directors shall hold office for the term prescribed in the bylaws.
- (5) The board of directors shall meet at least monthly.
- (6) The board of directors shall have the general management of the affairs, funds, and records of the credit union. In particular, the board of directors shall:
 - (a) act upon an application for membership;
 - (b) act upon expulsion of a member;
 - (c) fix the amount of surety bond required of each officer or employee having custody of funds;
 - (d) determine the rate of interest or dividend allowed on shares and deposits;
 - (e) determine the terms and conditions of credit granted to members;
 - (f) lend money, borrow money, and pledge security for any borrowing;
 - (g) fill a vacancy in the board of directors or in the credit committee, if applicable, or in the supervisory committee until the election and qualification of a person to fill the vacancy;
 - (h) appoint up to two alternate directors as provided in the bylaws;
 - (i) fix the amount of the entrance fee;
 - (j) declare dividends and their amount;
 - (k) make recommendations to meetings of the members relative to amendments to the articles of incorporation, and transact any other business of the credit union; and
 - (l) fix the maximum amount of credit, secured and unsecured, that may be extended to any one member, up to the limitations described in Subsections (7) and (8).
- (7)
 - (a) The credit that may be outstanding or available by a credit union at any one time is subject to the limitations described in this Subsection (7):
 - (i) except as provided in Subsection (8); and
 - (ii) except that the board of directors may:
 - (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(A)(II); or
 - (B) require that a person described in Subsection (7)(b)(ii)(A)(I) be a member of the credit union for more than six months before the date a member-business loan is extended.
 - (b)
 - (i) A credit union may not extend credit that is not a member-business loan to a member if as a result of that extension of credit the total credit that is not a member-business loan that the credit union has issued to that member exceeds at any one time:
 - (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:
 - (I) \$1,000; or
 - (II) 15% of capital and surplus up to a total of \$25,000; or
 - (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:
 - (I) \$25,000;
 - (II) 4% of capital and surplus; or
 - (III) 25% of the regular reserve.
 - (ii)
 - (A) Beginning March 24, 1999, a credit union may not extend a member-business loan to a person:
 - (I) if the credit union is a successor to or was a credit union described in Subsection 7-9-53(2)(c) as of May 3, 1999:
 - (Aa) if the person is a business entity, unless at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or

(Bb) if the person is an individual, unless the individual is a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or
 (II) if as a result of the extension of the member-business loan, the total amount outstanding for all member-business loans that the credit union has extended to that person at any one time exceeds the lesser of:

(Aa) 10% of the credit union's capital and surplus; or

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

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

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

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

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

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

(c)

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

(A) the actual undivided earnings; and

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

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

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

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

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

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

(d)

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

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

(B) Section 7-9-58.

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

(iii) If a person seeking an extension of credit from a credit union service organization is a member of more than one credit union holding an ownership interest in the credit union

service organization, the person shall specify the credit union to which the extension of credit is attributed under Subsection (7)(d)(ii).

- (iv) This Subsection (7)(d) effects only an extension of credit:
 - (A) that is extended on or after May 5, 2003; and
 - (B) by:
 - (I) a credit union service organization; or
 - (II) a credit union organized under this chapter.
- (e) Notwithstanding the other provisions of this section, a nonexempt credit union may not extend credit that the nonexempt credit union is prohibited from extending under Section 7-9-58.
- (8)
 - (a) A credit union may extend credit that is not a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is fully secured by share or deposit savings in the credit union.
 - (b)
 - (i) Except as provided in Subsection (8)(b)(ii), a credit union may extend a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(ii)(A)(II) only if:
 - (A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(A)(II) is secured by share or deposit savings in the credit union; or
 - (B) the repayment of that portion that is in excess of the limits described in Subsection (7)(b)(ii)(A)(II) is insured or guaranteed by, or there is an advance commitment to purchase that excess portion by, an agency of:
 - (I) the federal government;
 - (II) a state; or
 - (III) a political subdivision of the state.
 - (ii) Notwithstanding Subsection (8)(b)(i), a credit union may not extend a member-business loan if the total amount financed by the credit union exceeds \$1,000,000.
 - (c) For a member-business loan that is extended through a loan participation arrangement in accordance with Subsection 7-9-5(12):
 - (i) in applying the limitation of Subsection (8)(b), each credit union participating in the member-business loan may extend up to \$1,000,000 of the amount financed; and
 - (ii) the requirement of Subsection (7)(b)(ii)(A)(I) applies to membership in a credit union that:
 - (A) participates in the loan participation arrangement for the member-business loan;
 - (B) is organized under this chapter; and
 - (C) is a successor to or was a credit union described in Subsection 7-9-53(2)(c) as of May 3, 1999.
- (9) As provided in this chapter or in the credit union bylaws, the board of directors:
 - (a) within 30 days following the annual meeting of the members, shall appoint a supervisory committee consisting of not less than three members;
 - (b) within 30 days after the annual meeting of the members, shall appoint:
 - (i) a credit committee consisting of not less than three members; or
 - (ii) a credit manager in lieu of a credit committee;
 - (c) shall appoint a president to serve as general manager;
 - (d) shall have an executive committee;
 - (e) may appoint an investment officer;
 - (f) shall elect a secretary;
 - (g) may appoint other officers and committees that it considers necessary;
 - (h) shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies; and

- (i) on or before January 31 of each year, shall provide for:
 - (i) share insurance for the shares and deposits of the credit union from the National Credit Union Administration or successor federal agency; or
 - (ii) security expressly pledged for the payment of the shares and deposits in accordance with Section 7-9-45.
- (10) A person may not be a member of more than one committee except as otherwise provided in this chapter or in the credit union bylaws.
- (11) The president and secretary may not be the same person.

Amended by Chapter 97, 2014 General Session

7-9-21 Executive officers -- Election -- Power -- Terms.

- (1) At their first meeting held within 30 days following each annual meeting of the members, the board of directors shall elect from their own number a board chairman, one or more vice chairmen, and a secretary. These officers shall be the executive officers of the credit union.
- (2) The executive officers may act for the board in matters delegated to them by the board, as provided in the bylaws, however, the president appointed by the board, who may be a member of the board, shall take active direction of the credit union's operation, as prescribed in this chapter or in the bylaws.
- (3) The terms of the executive officers shall be one year or until their successors are chosen by the board of directors and have been duly qualified.

Enacted by Chapter 16, 1981 General Session

7-9-22 Credit committee -- Credit manager.

- (1) A credit union's bylaws shall provide for a credit committee, credit manager, or combination of both to be responsible for credit functions of the credit union. The bylaws shall prescribe the duties and responsibilities of the credit committee, credit manager, or combination of both.
- (2) A director may not be a member of the credit committee.
- (3) The credit union president may be appointed as credit manager. If the president is appointed as the credit manager, the president may not receive dual compensation for serving in both capacities.

Amended by Chapter 182, 1996 General Session

7-9-23 Supervisory committee -- Duties -- Suspension or removal of officer, director, or credit committee member.

- (1)
 - (a) Appointees to the supervisory committee shall hold office until the next annual meeting of the members and until successors are appointed.
 - (b) One member of the board of directors, except the chair of the board and the president, may be appointed to the supervisory committee.
 - (c) The president and other employees of the credit union may not be appointed to the supervisory committee.
- (2)
 - (a) The commissioner may remove any member of the supervisory committee for:
 - (i) any violation of this chapter or the bylaws of the credit union;
 - (ii) failure to fulfill the duties of office;

- (iii) malfeasance; or
- (iv) maladministration in office.
- (b) The board of directors shall fill any vacancy created by removal of a supervisory committee member.
- (3) It is the duty of the supervisory committee to:
 - (a) make or cause to be made an examination of the affairs of the credit union at least annually, including an inspection of the credit union's books, securities, cash, accounts, and loans;
 - (b) investigate or cause to be investigated any complaint that action by the credit union, board of directors, committees, officers, or employees does not comply with the law or the credit union's bylaws;
 - (c) make or cause to be made supplemental audits and examinations it considers necessary, or as required by the commissioner or board of directors;
 - (d) make a written report to the board of directors of its findings following each audit or examination; and
 - (e) make or cause to be made a verification of member accounts:
 - (i) annually by statistical sampling or otherwise, in accordance with generally accepted accounting principles; or
 - (ii) at least every two years by a complete verification.
- (4)
 - (a) The supervisory committee may, by majority vote, recommend to the board of directors:
 - (i) the suspension or removal of a credit union officer or a member of the credit committee; or
 - (ii) any other action the board of directors could lawfully take.
 - (b) Within 30 days after submission of the recommendation to the board of directors, if the board fails to adopt the material aspects of the recommendation, the supervisory committee may, by unanimous vote and after notifying the commissioner, call a meeting of the credit union members to consider the recommendation. The members may, by majority vote of those present at the meeting, adopt the supervisory committee's recommendation.
- (5)
 - (a) The supervisory committee may, by unanimous vote, suspend or remove a director for any violation of this chapter or the bylaws of the credit union, malfeasance, or maladministration in office.
 - (b) Within 30 days after the suspension or removal of a director, the supervisory committee shall, after notifying the commissioner, call a special meeting to present the matter to the membership of the credit union. The members may, by majority vote of those present, ratify or reject the action of the supervisory committee. If the members vote to remove the director, they may at the same meeting elect a replacement. If the members vote to reject the suspension or removal, they shall reinstate the director.
- (6) The bylaws may prescribe other duties and responsibilities of the supervisory committee.

Amended by Chapter 260, 2000 General Session

7-9-24 Compensation of directors, committee members, and president -- Expense reimbursement.

- (1) A member of the board of directors, credit committee, or supervisory committee may not receive any compensation for services as such, except that the reimbursement of reasonable expenses incurred in the execution of the duties of the position may not be considered compensation.

- (2) Any member of a credit union who incurs any expenses or performs any service authorized by the board of directors may be compensated or reimbursed for the expenses or services in an amount approved by the board of directors.
- (3) The board of directors shall determine the compensation for a president appointed as general manager.

Amended by Chapter 182, 1996 General Session

7-9-25 Shares -- Number unlimited -- Subscription and payment -- Par value -- Ownership required for membership -- Dormant accounts.

- (1) The capital of the credit union shall be unlimited in amount.
- (2) Shares of the credit union may be subscribed and paid for in cash or its equivalent in a manner prescribed in the bylaws.
- (3) The par value of each share of a credit union shall be determined by the board of directors in multiples of \$5 as prescribed in the bylaws.
- (4) Each member of the credit union shall subscribe to at least one share and pay the initial installment thereon. The par value of the share shall be paid for within six months.
- (5) The board of directors may close a member's account when the share par value is not paid within the required period or the par value is not maintained. Notice in writing shall be mailed to the member at the last known address and shall contain a statement that the member may increase payment or voluntarily close the account within 60 days of receipt of the notice.
- (6) When a member's account becomes dormant or is reasonably presumed to be dormant and abandoned, as provided in Chapter 1, General Provisions, the credit union by resolution of the board of directors may close the account and transfer the credits of the account to an account for unclaimed shares. Thereafter the credit union may not pay dividends or interest on the account, as provided in the bylaws, until the funds in the account escheat to the state of Utah. Prior to transferring the member's dormant and abandoned account to the credit union unclaimed shares account, the credit union shall mail a written notice to the member at the member's last known address stating that this action will be taken within 30 days of the date of the notice.

Amended by Chapter 189, 2014 General Session

7-9-26 Loans to members -- Investment officers -- Investments.

- (1) Subject to Subsections 7-9-20(7) and (8) and Section 7-9-58, capital and surplus of the credit union shall be loaned to the members for the purposes and upon the endorsements or security and the terms as the bylaws provide.
- (2) Within 30 days after the annual meeting of the members the board of directors may appoint one or more investment officers who shall have responsibilities for the credit union investment portfolio based upon policy established by the board of directors and as provided in this chapter or in the bylaws.
- (3) The credit union by action of its board of directors may invest its funds as follows:
 - (a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the United States of America or any of its agencies, or in any trusts established by investing directly or collectively in these instruments;
 - (b) in obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their political subdivisions;

- (c) in certificates of deposit or accounts issued by a federally insured state or national depository institution;
- (d) in loans to, or in shares or deposits of, other federally insured credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;
- (e) in shares, stocks, loans, or other obligations of any organization, corporation, or association, if the membership or ownership of the organization, corporation, or association is primarily confined or restricted to credit unions, and if the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations; and
- (f) in other investments that are reasonable and prudent.

Amended by Chapter 327, 2003 General Session

7-9-27 Dividends -- Interest refunds.

- (1) After allocations to required reserves, a credit union may declare and pay a dividend from current earnings and undivided earnings at the discretion of the board of directors and as provided in its bylaws.
- (2) Dividends may be paid at different rates on different types or sizes of accounts.
- (3) The board of directors may authorize any interest refunds on such classes of loans and under such conditions as the board authorizes.
- (4) A credit union need not pay a dividend on any account less than the par value of one share.

Amended by Chapter 8, 1983 General Session

7-9-28 Loan to credit union official.

The board of directors shall review and either approve or deny a loan application on which a member of the board of directors, credit committee, supervisory committee, president, or credit manager is a direct obligor, or endorser, cosigner, or guarantor.

Amended by Chapter 182, 1996 General Session

7-9-29 Allowance account for loan losses.

As of January 1, 1984, a credit union shall establish an allowance account for loan losses subject to regulation as the commissioner may prescribe.

Enacted by Chapter 8, 1983 General Session

7-9-30 Reserve requirements -- "Risk assets" defined.

- (1) As used in this section, the words "risk assets" means all assets except the following:
 - (a) cash on hand;
 - (b) deposits and shares in federal or state banks, savings and loan associations, and credit unions;
 - (c) assets which are insured by any agency of the federal government, the Federal National Mortgage Association, or the Government Mortgage Association;
 - (d) loans to students insured under Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. Sections 1071 et seq. or similar state insurance programs;
 - (e) loans insured under Title 1 of the National Housing Act, 12 U.S.C. Sections 1702 et seq. by the Federal Housing Administration;

- (f) shares or deposits in corporate credit unions as provided in Section 7-9-44, or of any other state act, or of the Federal Credit Union Act;
 - (g) accrued interest on nonrisk investments; and
 - (h) loans fully guaranteed by shares or deposits.
- (2) At the end of each accounting period, after payment of any interest refunds, the credit union shall determine the gross income from member loans and from this amount shall set aside a regular reserve in accordance with Subsections (2)(a), (b), and (c).
- (a) A credit union in operation for more than four years and having assets of \$500,000 or more shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 4% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 6% of the total of outstanding loans and risk assets.
 - (b) A credit union in operation for less than four years or having assets of less than \$500,000 shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 7-1/2% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 10% of the total of outstanding loans and risk assets.
 - (c) The regular reserve belongs to the credit union and shall be used to build equity and to meet contingencies or losses when authorized by the commissioner or the supervisor of credit unions.
 - (d) The commissioner may temporarily reduce or waive the requirements for the regular reserve placement if he finds it to be in the best interest of the credit union.

Amended by Chapter 324, 2010 General Session

7-9-31 Shares held in trust.

- (1) Shares may be issued to and deposits received in the name of a minor, and these shares and deposits may, in the discretion of the board of directors, be withdrawn by the minor or by his parent or guardian.
- (2) A credit union share account, share certificate, deposit, or deposit certificate may be held in trust provided that the trustor, trustee, or primary beneficiary is a member of the credit union.
- (3) The trustee of the trust meeting the requirements of Subsection (2) shall exercise the rights of the trust as a member of the credit union.

Amended by Chapter 182, 1996 General Session

7-9-32 Joint accounts -- Accounts providing for payment to designated person on death of owner or owners.

- (1) If a deposit or share account is opened in any credit union in the name of two or more persons, whether minor or adult, in such form that the money in the account is payable to the survivor or survivors, the account and all additions to it are considered held by these persons as joint tenants or owners.
- (2) The money in a joint account may be paid to or on the receipt or withdrawal order of any one of the joint owners during their lifetimes or to or on receipt of withdrawal order of any one of the survivors of them after the death of any one or more of them upon presentation of the pass or account book or other evidence of ownership as required by the bylaws of the credit union. The opening of the account in such form shall, in the absence of fraud, undue influence, or legal proof of other intent, be conclusive evidence in any action or proceedings concerning

said account of the intention of the parties to the account to vest title to such account and the additions thereto in such survivor and survivors.

- (3) By written instructions given to the credit union by all parties to the account, the signature of more than one of such persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on a receipt or withdrawal order, in which case the credit union shall pay the money in the account only in accordance with such instructions, but no such instructions shall limit the right of the survivor or survivors to receive the money in the account.
- (4) Payment of all or part of the money in a joint account as provided in Subsections (2) and (3) shall discharge the credit union from liability with respect to the money paid prior to receipt by the credit union of a written notice from any one of the joint owners directing the credit union not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice a credit union may refuse, without incurring liability, to honor any receipt or withdrawal on the account pending determination of the rights of the parties. No credit union paying any survivor shall be liable for any estate, inheritance, or succession taxes.
- (5) The pledge to a credit union of all or part of a share account in joint tenancy or ownership signed by that person or those persons who are authorized in writing to make withdrawals from the account shall, unless the terms of the share account provide specifically to the contrary, be a valid pledge and transfer to the credit union of that part of the account pledged, and does not operate to sever or terminate the joint and surviving ownership quality of all or any part of the account.
- (6) Any credit union may issue share or deposit accounts in the name of one or more persons with the provision that upon the death of the owner or owners thereof the proceeds shall be the property of the person or persons designated by the owner or owners and shown by the records of such credit union, but such proceeds shall be subject to the debts of the decedent and the payment of Utah inheritance tax, if any. However, upon the receipt of acquittance of the person so designated or six months having elapsed from the date of death and no claim on the account having been made for taxes, the credit union may make payment to the persons designated by the deceased owner or owners and having done so is discharged from further obligation and relieved from all further liability for payment made under this subsection.

Amended by Chapter 378, 2010 General Session

7-9-33 Lien and right of set off of credit union.

- (1) A credit union shall have a lien and right of set off on a member's individual, joint, multiple party, or transaction accounts, including any accumulated dividend or interest, for any sum due the credit union from the member.
- (2) All funds in the account at any time are subject to the lien and right of set off.
- (3) A security interest in the funds shall be perfected by restricting withdrawals of the funds.
- (4) A lien under this section does not apply if:
 - (a) the application of the lien will cause a loss of a tax incentive for the customer or member; or
 - (b) is prohibited by law.

Amended by Chapter 182, 1996 General Session

7-9-34 Tax exemption of credit unions.

- (1) Except as otherwise provided in this section, credit unions organized under this chapter or prior law are exempt from taxation.

- (2) Any real property or any tangible personal property owned by the credit union shall be subject to taxation to the same extent as other similar property is taxed.
- (3) For purposes of the corporate tax, credit unions shall be governed by Section 59-7-102.
- (4) This section does not exempt credit unions from sales or use taxes, or fees owed to the department in accordance with this title and rules of the department.

Amended by Chapter 178, 1994 General Session

7-9-36 Dissolution.

- (1) A credit union may be dissolved upon a majority vote of the entire membership.
- (2) A copy of a notice of a special meeting to consider the matter shall be mailed to the members of the credit union at least 10 days before the date of the meeting.
- (3) Any member not present at the meeting may within the following 20 days vote for or against dissolution by signing a statement approved by the commissioner. A vote cast in this manner has the same force and effect as if cast at the meeting. A member not voting within the 20-day period is considered to be in favor of the dissolution.
- (4) The officers of the credit union may appoint a liquidating agent, subject to the approval of the commissioner, who has the right to exercise all the powers of the dissolved credit union to wind up its affairs. If the liquidating agent is other than a bona fide trade association of authorized credit unions recognized by the commissioner, or the National Credit Union Administration, the liquidator shall provide a bond or other security, as required by the commissioner, for the faithful discharge of duties in connection with the liquidation, including accounting for all money collected.
- (5) Upon the vote required under this section, a certificate of dissolution, signed by the chair of the board and the secretary, shall be filed with the commissioner and shall state the vote cast in favor of dissolution, the proposed date upon which the credit union will cease to do business, the names and addresses of the directors and officers of the credit union and the name and address of the liquidating agent appointed by the officers of the credit union. The commissioner shall approve the dissolution unless he finds that the procedures set forth in this section have not been properly followed.
- (6) Upon approval, the credit union shall cease to do business except for the purpose of discharging its debts, collecting and distributing assets, and doing all acts required to adjust, wind up, and dissolve its business and affairs. It may sue and be sued for the purpose of enforcing debts or obligations until its affairs are fully adjusted.
- (7) If the board or the liquidating agent determines that all assets from which a reasonable return could be expected have been liquidated and distributed, it shall execute a certificate of dissolution in a form approved by the commissioner and file it with the department and the Division of Corporations and Commercial Code. After the certificate has been filed, the credit union is dissolved.

Amended by Chapter 97, 2014 General Session

7-9-37 Transfer of members of dissolved, merged, consolidated, transferred, or acquired credit union.

Members of a dissolved, merged, consolidated, transferred, or acquired credit union may become members of another existing credit union with a related field of membership as approved by the commissioner.

Amended by Chapter 327, 2003 General Session

7-9-39 Voluntary merger.

- (1) A credit union may merge with another credit union under the existing charter of the other credit union when all of the following have occurred:
 - (a) the majority of the directors of each merging credit union votes in favor of the merger plan;
 - (b) the commissioner approves the merger plan;
 - (c) subject to Subsection (7):
 - (i) the majority of the members of each merging credit union present at a meeting called for the purpose of considering the merger plan votes to approve the merger plan; or
 - (ii) the majority of the members of each merging credit union votes to approve the merger plan by means of United States Postal Service mail; and
 - (d)
 - (i) the National Credit Union Administration or its successor federal deposit insurance agency approves the merger plan and commits to insure deposits of the surviving credit union; or
 - (ii) the commissioner approves the surviving credit union to operate without federal deposit insurance in accordance with Section 7-9-45.
- (2) Upon merger, the chair of the board and secretary of each credit union shall execute, and file with the department, a certificate of merger setting forth:
 - (a) the time and place of the meeting of the board of directors at which the plan was approved;
 - (b) the vote by which the directors approved the plan;
 - (c) a copy of the resolution or other action by which the plan was approved;
 - (d) the time and place of the meeting of the members at which the plan was approved;
 - (e) the vote by which the members approved the plan; and
 - (f) the effective date of the merger, which shall be:
 - (i) the date on which the last approval or vote required under Subsection (1) was obtained; or
 - (ii) a later date specified in the merger plan.
- (3) On the effective date of a merger:
 - (a) the property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer; and
 - (b) the debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union.
- (4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered under this chapter, the residents of a county in the field of membership of the merging credit union may not be added to the field of membership of the surviving credit union, except that the surviving credit union:
 - (a) may admit as a member any member of the merging credit union that is not in the field of membership of the surviving credit union if the member of the merging credit union was a member of that credit union at the time of merger; and
 - (b) may service any member-business loan of the merging credit union until the member-business loan is paid in full.
- (5)
 - (a) This section shall be interpreted, whenever possible, to permit a credit union chartered under this chapter to merge with a credit union chartered under any other law if the preservation of membership interest is concerned.
 - (b) The commissioner may under Subsection (1)(b) approve a merger plan that includes the addition of the residents of a county in the field of membership of the merging credit union to the field of membership of the surviving credit union if the commissioner finds that:

- (i) the expansion of the field of membership of the surviving credit union is necessary for that credit union's safety and soundness; and
 - (ii) the expanded field of membership of the surviving credit union meets the criteria stated in Subsection 7-9-52(3)(c).
- (6) If the commissioner approves a merger plan under Subsection (5)(b) under which the surviving credit union's field of membership after the merger will include residents of more than one county, Subsections (6)(a) through (e) apply to the surviving credit union.
- (a) The domicile-county of the surviving credit union is:
- (i) if the credit union does not have a field of membership under Subsection 7-9-53(2)(c), the county in which the credit union has located the greatest number of branches as of the date the merger is effective; or
 - (ii) if the credit union has a field of membership under Subsection 7-9-53(2)(c), the county that is the domicile-county of the surviving credit union under Section 7-9-53;
- (b) Within the surviving credit union's domicile-county, the surviving credit union may establish, relocate, or otherwise change the physical location of the credit union's:
- (i) main office; or
 - (ii) branch.
- (c) Within a county other than the domicile-county that is in the field of membership of the surviving credit union after the merger, the surviving credit union may not:
- (i) establish a main office or branch if the main office or branch was not located in the county as of the date that the merger is effective;
 - (ii) participate in a service center in which it does not participate as of the date that the merger is effective; or
 - (iii) relocate the surviving credit union's main office or a branch located in the county as of the date that the merger is effective unless the commissioner finds that the main office or branch is being relocated within a three-mile radius of the original location of the main office or branch.
- (d) After the merger, the surviving credit union may admit as a member:
- (i) a person in the surviving credit union's field of membership after the date that the merger is effective; or
 - (ii) a person belonging to an association that:
 - (A) is added to the field of membership of the credit union; and
 - (B) resides in the domicile-county of the surviving credit union, as defined in Section 7-9-53.
- (e) In addition to any requirement under this Subsection (6), a surviving credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.
- (7) A vote of the membership of the surviving credit union is not required under Subsection (1)
- (c) if its board of directors determines that the merger will not have a significant effect on the organization, membership, or financial condition of the credit union.

Amended by Chapter 97, 2014 General Session

7-9-39.5 Supervisory merger.

If a credit union is merged with another credit union as a result of a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, the commissioner may permit the surviving credit union to have a field of membership that is larger than a field of membership permitted under Section 7-9-51.

Amended by Chapter 189, 2014 General Session

7-9-42 Record requirements.

- (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules the commissioner may prescribe or in accordance with Chapter 1, General Provisions.
- (2) In prescribing these rules, the commissioner shall consider the size of a credit union and its ability to comply.
- (3) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the rules.
- (4) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

Amended by Chapter 189, 2014 General Session

7-9-43 Board of Credit Union Advisors.

- (1)
 - (a) There is created a Board of Credit Union Advisors of five members to be appointed by the governor.
 - (b) Members of the advisory board shall be individuals who are familiar with and associated in the field of credit unions.
 - (c) At least three of the members of the advisory board shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted to the governor by a bona fide trade association of authorized credit unions recognized by the commissioner.
- (2) The advisory board shall meet quarterly.
- (3) A chair of the advisory board shall be chosen each year from the membership of the advisory board by a majority of the members present at the advisory board's first meeting each year.
- (4)
 - (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the advisory board is appointed every two years.
- (5) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.
- (6) A member shall serve until the member's successor is appointed and qualified.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) Meetings of the advisory board shall be held on the call of the chair. A majority of the members of the advisory board shall constitute a quorum.
- (9) The advisory board has the duty to advise the governor and commissioner on problems relating to credit unions and to foster the interest and cooperation of credit unions in the improvement of their services to the people of the state.

Amended by Chapter 97, 2014 General Session

7-9-44 Corporate central credit union.

- (1) A credit union in which all credit unions, a bona fide trade association of authorized credit unions recognized by the commissioner, and its affiliates are eligible for membership may be established in this state and shall be known as a corporate central credit union.
- (2) The corporate central credit union has all the powers and rights granted credit unions established under this chapter. The maximum loan by a corporate central credit union shall be established in the corporate central credit union bylaws.
- (3) Beginning January 1, 1984, and at the end of each dividend period, the corporate central credit union, in lieu of a regular reserve as provided in Section 7-9-30, shall transfer 2% of its gross earnings to its central reserve until the reserve equals 1-1/2% of total assets. If the central reserve falls below 1-1/2% of total assets, it shall be replenished by regular transfers of 2% of gross earnings or by contributions, whichever is less, in such amounts as are needed to maintain the central reserve at 1-1/2% of total assets.
- (4) Charges may be made against the central reserve to the extent permitted against a regular reserve. No other charges may be made against the central reserve, except as authorized in writing by the commissioner.
- (5) The purposes of the corporate central credit union are:
 - (a) to accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;
 - (b) to act as an intermediary for credit union funds between members, other corporate credit unions, other financial institutions, and government agencies;
 - (c) to obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;
 - (d) to foster and promote, in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations, the economic security, growth, and development of member credit unions; and
 - (e) to perform other financial services of benefit to its members authorized by the commissioner.
- (6) The corporate central credit union is exempt from supervision fees but is subject to examination fees.

Amended by Chapter 97, 2014 General Session

7-9-45 Insurance of shares and deposits -- Security on shares and deposits.

- (1) Except as provided in Subsection (2), a credit union subject to the jurisdiction of the department shall obtain and maintain insurance on shares and deposits from the National Credit Union Administration or successor federal deposit insurance agency.
- (2) Notwithstanding Subsection 7-1-704(7)(a)(v) and Subsection (1), a credit union may not be required to obtain federal insurance on shares and deposits if:
 - (a) the commissioner approves the credit union's election not to obtain federal insurance on shares and deposits;
 - (b) as security for the shares and deposits, the credit union maintains securities:
 - (i) that are issued by or directly and unconditionally guaranteed by:
 - (A) the United States; or
 - (B) an agency of the United States;
 - (ii) that are held in an account with a primary reporting dealer that is:

- (A) recognized by the Federal Reserve Bank of New York; and
 - (B) independent of the credit union;
 - (iii) that are held in accordance with Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities; and
 - (iv) in which the department has an express and exclusive security interest; and
 - (c) the aggregate value of the securities described in Subsection (2)(b) is at all times equal to or greater than 1.15 times the aggregate amount of the shares and deposits of the credit union.
- (3) The commissioner may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.
- (4) Failure to comply with this section constitutes grounds for supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

Amended by Chapter 189, 2014 General Session

7-9-46 Out-of-state credit unions -- Authorization to do business in state -- Supervision -- Examination.

- (1) As used in this section "out-of-state credit union" means any credit union whose home state is not Utah.
- (2) An out-of-state credit union may maintain a branch in this state only if:
- (a) maintaining the Utah branch is permissible under applicable law, including Sections 7-1-702 and 7-1-708 in the case of a state chartered credit union;
 - (b) the branch has been authorized by:
 - (i) the department and the chartering authority of the credit union's home state in the case of a state chartered credit union; or
 - (ii) the National Credit Union Administration or successor agency in the case of a federally chartered credit union; and
 - (c) the branch will not serve a member of the out-of-state credit union who is a member of the credit union based solely on the member residing in a geographic area located in whole or in part in Utah.
- (3) The commissioner may examine and supervise all out-of-state credit unions with a branch in the state, except federal credit unions, in the same manner as the commissioner examines and supervises credit unions in this state.

Amended by Chapter 327, 2003 General Session

7-9-48 Disclosure of share and deposit insurance -- Disclosure if secured through securities.

- (1) A credit union shall comply with all share and deposit insurance disclosure requirements of the National Credit Union Administration or its successor agency.
- (2) In addition to the disclosure requirements described in Subsection (1), a credit union that in accordance with Subsection 7-9-45(2) is not insured by the National Credit Union Administration or successor federal deposit insurance agency shall provide, as prescribed by rule or order, notice that deposits and shares in the credit union are not insured by a federal deposit insurance agency.

Amended by Chapter 329, 1999 General Session

7-9-49 Limitation of personal liability of directors and committee members.

- (1) Without limiting the generality of Section 7-9-50, the articles of incorporation may include a provision eliminating or limiting the personal liability of a director, supervisory committee member, or credit committee member to the credit union, its members, or its depositors for monetary damages for any action taken or any failure to take any action as a director, supervisory committee member, or credit committee member, except liability for:
 - (a) the amount of a financial benefit received by a director, supervisory committee member, or credit committee member to which he is not entitled;
 - (b) an intentional infliction of harm on the credit union, its members, or depositors; or
 - (c) an intentional violation of criminal law.
- (2) No provision authorized under this section may eliminate or limit the liability of a director, supervisory committee member, or credit committee member for any act or omission occurring prior to the date when the provision becomes effective.
- (3) Any provision authorized under this section to be included in the articles of incorporation may also be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of members as would be required to approve it as an amendment to the articles of incorporation.

Amended by Chapter 200, 1994 General Session

7-9-50 General limitation on liability.

A director, supervisory committee member, credit committee member, or officer is not liable to the credit union, its members, its depositors, any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as a director, supervisory committee member, credit committee member, or officer, as the case may be, unless:

- (1) he has breached or failed to perform the duties of the office in compliance with this title; and
- (2) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the credit union or its members.

Enacted by Chapter 200, 1994 General Session

7-9-51 Field of membership.

- (1) Except as provided in Subsection (3) or (5), the field of membership of a credit union may include only the following:
 - (a) the immediate family of a member of the credit union;
 - (b) the employees of the credit union;
 - (c) residents of a single county;
 - (d) one or more associations; and
 - (e) residents of a city of the third, fourth, or fifth class or a town as classified in Section 10-2-301 if:
 - (i) the city or town is located in a county of the fourth through sixth class as classified in Section 17-50-501;
 - (ii) at the time the residents of the city or town are included in the field of membership of a credit union, the credit union has not become a nonexempt credit union under Section 7-9-55; and
 - (iii) approved by the commissioner in accordance with Subsection 7-9-52(6).
- (2) A credit union may have a field of membership that is more restrictive than the field of membership described in Subsection (1).

- (3) A credit union may have a field of membership that is less restrictive than the field of membership described in Subsection (1) if the field of membership of the credit union:
 - (a) is determined under Subsection 7-9-53(2)(c);
 - (b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or
 - (c) is permitted by the commissioner after a merger in accordance with Section 7-9-39.5.
- (4) If a credit union includes the residents of one county in its field of membership, the credit union may not change its field of membership to include a different county than the county that is first included in the field of membership of the credit union.
- (5) Notwithstanding the other provisions of this section or any restrictions of Section 7-9-53, a credit union may have a field of membership that is less restrictive than the field of membership described in Subsection (1), under the following conditions:
 - (a) the field of membership of the credit union may include no more than all the residents of two counties in addition to any association included in the field of membership of the credit union; and
 - (b) both counties described in Subsection (5)(a) must be a county of the third through sixth class, as classified in Section 17-50-501.

Amended by Chapter 97, 2014 General Session

7-9-52 Expansion of a field of membership.

- (1) The commissioner shall comply with Subsection (2) if the commissioner receives a request to approve an amendment to the bylaws of a credit union that expands the credit union's field of membership to include:
 - (a) residents of a county;
 - (b) an association consisting of 50 or more persons; or
 - (c) subject to the requirements of Subsection (6), residents of a city of the third, fourth, or fifth class or a town described in Subsection 7-9-51(1)(e).
- (2) If the conditions of Subsection (1) are met, the commissioner shall:
 - (a) give notice of the request in the manner and to the extent the commissioner considers appropriate to institutions subject to the jurisdiction of the department that:
 - (i) are located in the county, if the field of membership is being expanded to include residents of a county;
 - (ii) serve or may serve the association described in Subsection (1)(b), if that association is being added to the field of membership; or
 - (iii) are located in the county in which a city or town described in Subsection (1)(c) is located, if the field of membership is being expanded to include residents of the city or town; and
 - (b) cause a supervisor to examine and submit written findings and recommendations to the commissioner as to:
 - (i) whether the credit union is adequately capitalized;
 - (ii) whether the credit union has the financial capacity to serve the financial needs of the expanded field of membership in a safe and sound manner;
 - (iii) whether the credit union has the managerial expertise to serve the financial needs of the expanded field of membership in a safe and sound manner;
 - (iv) any potential harm the expansion of the field of membership may have on the institutions described in Subsection (2)(a); and
 - (v) the probable beneficial effect of the expansion.
- (3) The commissioner may approve the amendment to the bylaws described in Subsection (1) if the commissioner:

- (a) has given the notice required under Subsection (2)(a);
- (b) received the written findings and recommendations of the supervisor under Subsection (2)(b);
and
- (c) finds that:
 - (i) the credit union is adequately capitalized;
 - (ii) the credit union has the financial capacity to serve the financial needs of the expanded field of membership in a safe and sound manner;
 - (iii) the credit union has the managerial expertise to serve the financial needs of the expanded field of membership in a safe and sound manner; and
 - (iv) any potential harm the expansion of the field of membership may have on other institutions subject to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of the expansion.
- (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the expansion of a credit union's field of membership.
- (5) This section may not be interpreted to permit a credit union to:
 - (a) expand its field of membership to include residents of more than one county except to the extent permitted by Subsection 7-9-51(5); or
 - (b) change the county included in the field of membership of a credit union, if any.
- (6)
 - (a) If the commissioner receives a request to approve an amendment to the bylaws of a credit union that expands the credit union's field of membership to include residents of a city or town described in Subsection (1)(c), before approving the expanded field of membership, in addition to the requirements of Subsection (2), the commissioner shall:
 - (i) require that a supervisor examine and submit written findings and recommendations to the commissioner as to whether but for the residents described in Subsection (1)(c) being included in the field of membership of the credit union, no depository institutions would likely be located within a reasonable distance from the city or town described in Subsection (1)(c);
and
 - (ii) find that but for the residents described in Subsection (1)(c) being included in the field of membership of the credit union, no depository institutions would likely be located within a reasonable distance from the city or town described in Subsection (1)(c).
 - (b) A nonexempt credit union may not apply under this Subsection (6) to include a city or town described in Subsection (1)(c) in the nonexempt credit union's field of membership.

Amended by Chapter 327, 2003 General Session

7-9-53 Grandfathering.

- (1) As used in this section:
 - (a) "Association that resides in a domicile-county" means an association that:
 - (i) operates a place of business or other physical location in the domicile-county; or
 - (ii) has at least 100 members that are residents of the domicile-county.
 - (b) "Domicile-county" means the county:
 - (i) in the field of membership of the credit union as of January 1, 1999; and
 - (ii) in which the credit union has located the greatest number of branches as of January 1, 1999.
 - (c) "Grandfathered field of membership" means the field of membership as of May 3, 1999, of a credit union described in Subsection (2)(c).

- (2) For each credit union formed before January 1, 1999, its field of membership as of May 3, 1999, is determined as follows:
- (a) if the field of membership stated in the bylaws of the credit union as of January 1, 1999, complies with Section 7-9-51, the credit union's field of membership is the field of membership indicated in its bylaws;
 - (b)
 - (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(b)(ii) if:
 - (A) the field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and
 - (B) as of January 1, 1999, the credit union's main office and any of its branches are located in only one county in its field of membership;
 - (ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(b)(i) is:
 - (A) the immediate family of a member of the credit union;
 - (B) the employees of the credit union;
 - (C) residents of the one county in which the credit union has its main office or branches as of January 1, 1999; and
 - (D) any association that as of January 1, 1999, is in the field of membership of the credit union; and
 - (c)
 - (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(c)(ii) if:
 - (A) the field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and
 - (B) as of January 1, 1999, the credit union has a main office or branch in more than one county;
 - (ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(c)(i) is:
 - (A) the immediate family of a member of the credit union;
 - (B) the employees of the credit union;
 - (C) residents of the credit union's domicile-county;
 - (D) the residents of any county other than the domicile-county:
 - (I) if, as of January 1, 1999, the county is in the field of membership of the credit union; and
 - (II) in which, as of January 1, 1994, the credit union had located its main office or a branch; and
 - (E) any association that as of January 1, 1999, is in the field of membership of the credit union.
- (3) If a credit union's field of membership is as described in Subsection (2)(c), beginning May 3, 1999, the credit union:
- (a) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:
 - (i) main office; or
 - (ii) branch;
 - (b) within a county other than a domicile-county that is in the credit union's grandfathered field of membership, may not:
 - (i) establish a main office or branch that:
 - (A) was not located in the county as of January 1, 1999; or

- (B) for which the credit union has not received by January 1, 1999, approval or conditional approval of a site plan for the main office or branch from the planning commission of the municipality where the main office or branch will be located;
- (ii) participate in a service center in which it does not participate as of January 1, 1999;
- (iii) relocate the credit union's main office or a branch located in the county as of January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; or
- (iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:
 - (A) the effective date of the merger is on or after May 5, 2003;
 - (B) the credit union with the field of membership described in Subsection (2)(c) is the surviving credit union after the merger; and
 - (C) the credit union did not own and operate the branch before the effective date of the merger; and
- (c) may only admit as a member:
 - (i) a person in the credit union's grandfathered field of membership; or
 - (ii) a person belonging to an association that:
 - (A) is added to the field of membership of the credit union; and
 - (B) resides in the domicile-county of the credit union.
- (4) If a credit union's field of membership is as described in Subsection (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a field of membership under Section 7-9-51.
- (5)
 - (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union described in Subsection (2)(c) may:
 - (i) operate an office or branch that is operated by the credit union on May 3, 1999, but that is not located in a county that is in the credit union's field of membership as of May 3, 1999; and
 - (ii) serve a member who is not in a credit union's field of membership as of May 3, 1999, if the member is a member of the credit union as of March 15, 1999.
 - (b) Subsection (5)(a) does not authorize a credit union to:
 - (i) establish a branch in a county that is not in the credit union's field of membership as of May 3, 1999, unless the branch meets the requirements under this title for establishing a branch; or
 - (ii) for a credit union described in Subsection (2)(c), include in its field of membership an association that:
 - (A) as of January 1, 1999, is not included in the credit union's field of membership; and
 - (B) does not reside within the credit union's domicile-county.
- (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later than August 3, 1999, to comply with this section.
- (7) In addition to any requirement under this section, a credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

Amended by Chapter 97, 2014 General Session

7-9-55 Nonexempt credit unions.

(1)

- (a) A credit union organized under this chapter is a nonexempt credit union under this section on the day on which:
 - (i) on or after May 5, 2003 the credit union has a field of membership as evidenced by the bylaws of the credit union that includes all residents of two or more counties; and
 - (ii) at least two of the counties described in Subsection (1)(a)(i) are counties of the first or second class as classified by Section 17-50-501.
- (b) For purposes of Subsection (1)(a) only:
 - (i) residents of a county that are added to the field of membership of a credit union as a result of a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, are not considered to be within the field of membership of that credit union; and
 - (ii) residents of a city of the third, fourth, or fifth class or a town that are added to the field of membership of a credit union in accordance with Section 7-9-52 are not considered to be within the field of membership of that credit union unless all residents of the county in which that city or town are located are included in the field of membership of the credit union.
- (2) If a credit union becomes a nonexempt credit union under this section, the nonexempt credit union is a nonexempt credit union:
 - (a) for as long as the nonexempt credit union is organized under this chapter; and
 - (b) notwithstanding whether after the day on which the nonexempt credit union becomes a nonexempt credit union the nonexempt credit union meets the requirements of Subsection (1)(a).
- (3) Regardless of whether or not a credit union has located branches in two or more counties in this state, a credit union organized under this chapter does not become a nonexempt credit union if the field of membership of the credit union as evidenced by the bylaws of the credit union does not meet the requirements of Subsection (1).

Amended by Chapter 189, 2014 General Session

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

- (1)
 - (a) Notwithstanding the other provisions of this chapter, beginning on May 5, 2003, a nonexempt credit union may not:
 - (i)
 - (A) extend a member-business loan;
 - (B) renew a member-business loan that is extended before May 5, 2003; or
 - (C) extend the maturity date or increase the amount of a member-business loan that is extended before May 5, 2003;
 - (ii) originate, participate in, or obtain any interest in a co-lending arrangement, including a loan participation arrangement; or
 - (iii) subject to Subsection (2), extend credit that is not a member-business loan if as a result of the extension of credit the total credit that is not a member-business loan that the nonexempt credit union has issued to that member exceeds at any one time \$250,000 adjusted as provided in Subsection (1)(b).
 - (b) The adjustment described in Subsection (1)(a)(iii) shall be calculated by the commissioner as follows:
 - (i) beginning July 1, 2008 and for a calendar year beginning on or after January 1, 2009, the commissioner shall increase or decrease the dollar amount in Subsection (1)(a)(iii) by a

- percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2007;
- (ii) after the commissioner increases the dollar amount listed in Subsection (1)(a)(iii), the commissioner shall round the dollar amount to the nearest whole dollar;
 - (iii) if the percentage difference under Subsection (1)(b)(i) is zero or a negative percentage, the consumer price index increase for the year is zero; and
 - (iv) for purposes of this Subsection (1)(b), the commissioner shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.
- (2) Notwithstanding Subsection (1)(a)(iii), a nonexempt credit union may extend credit in an amount that exceeds the limits provided in Subsection (1)(a)(iii) to a member if:
- (a) the excess portion of the credit described in Subsection (1)(a)(iii) is fully secured by the member's share or deposit savings in the nonexempt credit union; or
 - (b) the credit is extended to a member of the nonexempt credit union:
 - (i) for the purpose of:
 - (A) paying amounts owed by the member to purchase a one- to four-family dwelling that is the primary residence of that member; or
 - (B) refinancing the balance of amounts owed by the member for the purchase of a one- to four-family dwelling that is the primary residence of that member; and
 - (ii) the credit extended under this Subsection (2)(b) is less than or equals \$1,000,000.
- (3) In accordance with Subsection 7-9-20(7)(d), a credit union service organization may not extend credit to a member of a nonexempt credit union holding an ownership interest in the credit union service organization if it would be a violation of this section for the nonexempt credit union to extend the credit to the member.
- (4) This section may not prevent a nonexempt credit union from servicing a loan extended before May 5, 2003.

Amended by Chapter 189, 2014 General Session

7-9-59 Credit union service organizations -- Limitations on providing services through other entities.

- (1) This section applies to a credit union service organization in which a credit union organized under this chapter has an ownership interest.
- (2)
- (a) A credit union service organization may provide a service only if the service is:
 - (i)
 - (A) listed in Subsection (2)(b); or
 - (B) approved by the commissioner in accordance with Subsection (4)(b); and
 - (ii)
 - (A) except for the extension of credit by the credit union service organization, limited primarily to:
 - (I) credit unions that hold an ownership interest in the credit union service organization;
 - (II) members of credit unions that hold an ownership interest in the credit union service organization;
 - (III) members of credit unions that contract with the credit union service organization; or
 - (IV) credit unions that contract with the credit union service organization but do not hold an ownership interest in the credit union service organization; or

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

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

(i) the following checking and currency services:

(A) check cashing;

(B) coin and currency services; and

(C) services related to:

(I) a money order;

(II) a savings bond;

(III) a travelers check; or

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

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

(A) accounting services;

(B) courier services;

(C) credit analysis;

(D) facsimile transmission and copying services;

(E) services related to conducting an internal audit for a credit union;

(F) locator services;

(G) services related to management and personnel training and support;

(H) marketing services;

(I) research services; or

(J) services related to a supervisory committee audit;

(iii) consumer mortgage loan origination;

(iv) the following electronic transaction services:

(A) automated teller machine services;

(B) credit card services;

(C) debit card services;

(D) data processing services;

(E) electronic fund transfer services;

(F) services related to electronic income tax filings;

(G) payment item processing;

(H) wire transfer services; or

(I) cyber financial services;

(v) the following financial counseling services:

(A) developing and administering personnel benefit plans including:

(I) individual retirement accounts;

(II) Keogh plans; or

(III) deferred compensation plans;

(B) estate planning;

(C) financial planning and counseling;

(D) income tax preparation;

(E) investment counseling; or

(F) retirement counseling;

(vi) fixed asset services related to the:

(A) management, development, sale, or lease of fixed assets; or

(B) sale, lease, or servicing of computer hardware or software;

(vii) the following insurance brokerage or agency services:

- (A) operating as an agency for sale of insurance;
 - (B) providing vehicle warranty programs; or
 - (C) providing group purchasing programs;
 - (viii) the following leasing services:
 - (A) leasing of personal property; or
 - (B) real estate leasing of excess credit union service organization property;
 - (ix) the following loan support services:
 - (A) debt collection services;
 - (B) loan processing, servicing, and sales; or
 - (C) sale of repossessed collateral;
 - (x) the extension of credit including member-business loans;
 - (xi) the following record retention, security, and disaster recovery services:
 - (A) alarm-monitoring and other security services;
 - (B) disaster recovery services;
 - (C) services related to:
 - (I) microfilm;
 - (II) microfiche;
 - (III) optical and electronic imaging; or
 - (IV) CD-ROM data storage retrieval;
 - (D) providing forms and supplies; or
 - (E) services related to record retention and storage;
 - (xii) securities brokerage services;
 - (xiii) operation of shared credit union branch services, including service centers;
 - (xiv) student loan origination;
 - (xv) travel agency services;
 - (xvi) the following trust and trust-related services:
 - (A) acting as an administrator for a prepaid legal service plan;
 - (B) acting in a fiduciary capacity including as:
 - (I) trustee;
 - (II) guardian;
 - (III) conservator; or
 - (IV) estate administrator; or
 - (C) trust services; or
 - (xvii) making credit union service organization investments in noncredit union service organization service providers.
- (3)
- (a) One or more credit unions organized under this chapter may form a credit union service organization on or after the day on which each credit union forming the credit union service organization obtains in accordance with this section the approval by the commissioner for the formation of the credit union service organization.
 - (b) To obtain approval from the commissioner for the formation of a credit union service organization, each credit union that is forming a credit union service organization shall file an application with the commissioner that specifies:
 - (i) whether the credit union meets the capital and surplus standards established by rule by the commissioner;
 - (ii) the services to be provided by the credit union service organization; and
 - (iii) any information required by rule by the commissioner.

- (c) The commissioner may by rule establish the requirements for forming of a credit union service organization to ensure that:
 - (i) the credit union service organization as formed:
 - (A) has the financial capacity to provide the services described in the application requesting the formation of the credit union service organization in a safe and sound manner; and
 - (B) has the managerial expertise to provide the services described in the application requesting the formation of the credit union service organization in a safe and sound manner; and
 - (ii) any potential harm that granting the approval may have on other institutions subject to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of the credit union service organization providing the services.
- (4)
 - (a) A credit union service organization may provide a service that is described in Subsection (2)(b) but not listed in the application requesting the formation of the credit union service organization by filing written notice with the commissioner at least 30 days before the day on which the credit union service organization first provides the service.
 - (b) A credit union service organization may provide a service not described in Subsection (2)(b) if:
 - (i) the credit union service organization files a written request for approval to provide the service with the commissioner; and
 - (ii) the commissioner approves the credit union service organization providing that service.
 - (c) The commissioner may at any time limit the services engaged in by a credit union service organization on the basis of:
 - (i) a supervisory reason;
 - (ii) a legal reason; or
 - (iii) a safety and soundness reason.
- (5) The commissioner may conduct examinations of a credit union service organization in accordance with Section 7-1-314.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules for purposes of this section:
 - (a) defining what constitutes an ownership interest held by a credit union;
 - (b) specifying the information required to be included in an application seeking to form a credit union service organization;
 - (c) specifying in accordance with Subsection (3), the requirements for forming a credit union service organization;
 - (d) specifying the procedure for obtaining approval to provide a service under Subsection (4)(a); and
 - (e) specifying the conditions under which a credit union service organization may provide a service described in Subsection (2).
- (7)
 - (a) Except as provided in Subsection (7)(b), a credit union may not provide any service to a member of the credit union through:
 - (i) a person who is controlled by or is under common control with the credit union whether or not the control is exercised:
 - (A) directly; or
 - (B) indirectly through one or more intermediary controls; or
 - (ii) an entity in which the credit union holds an ownership interest.

- (b) Notwithstanding Subsection (7)(a), a credit union may provide services to a member of a credit union:
 - (i) through a credit union service organization to the extent permitted by this section; or
 - (ii) through a loan production office to the extent those services are authorized by Section 7-1-715.
 - (c) Notwithstanding Section 7-1-103, for purposes of this section, "control" means the power, directly, or indirectly, to:
 - (i) direct or exercise a controlling influence over:
 - (A) the management or policies of an entity; or
 - (B) the election of a majority of the directors or trustees of an entity;
 - (ii) vote 20% or more of any class of voting securities of an entity by an individual; or
 - (iii) vote more than 5% of any class of voting securities of an entity by a person other than an individual.
 - (d) Nothing within this section may be interpreted as prohibiting a credit union from entering into a contract or agreement to provide services to members of the credit union if the person with whom the credit union enters into the contract agreement is not a person described in Subsection (7)(a).
- (8)
- (a) A credit union holding an ownership interest in a credit union service organization operating on May 5, 2003 is not required to file an application requesting to form that credit union service organization.
 - (b) A credit union service organization operating on May 5, 2003:
 - (i) shall provide the commissioner written notice of the services the credit union service organization provides by no later than July 1, 2003; and
 - (ii) may provide a service not described in Subsection (2)(b) on or after July 1, 2003 only if the credit union service organization has obtained approval from the commissioner in accordance with Subsection (4).

Amended by Chapter 382, 2008 General Session

Chapter 14

Credit Information Exchange

7-14-1 Definitions.

As used in this chapter:

- (1) "Credit reporting agency" includes any co-operative credit reporting agency maintained by an association of financial institutions or one or more associations of merchants.
- (2) "Depository institution" means any institution authorized by state or federal law to accept and hold demand deposits or other accounts which may be used to effect third party payment transactions. The definition of "depository institution" in Chapter 1, General Provisions, does not apply to Chapter 14, Credit Information Exchange.

Amended by Chapter 189, 2014 General Session

7-14-2 Legislative findings.

The substantial financial loss to the state and to trade and commerce within this state resulting from the dishonor or other return of checks, drafts, or other orders for the payment of money, including transactions to be consummated by electronic means, requires concerted effort by financial institutions to attempt to minimize the number of such occurrences. The Legislature finds that to facilitate such concerted effort adequate protection against liability of the participating financial institutions is necessary.

Enacted by Chapter 16, 1981 General Session

7-14-3 Information an institution may furnish.

Any institution doing business in the state may report to any other financial institution, or credit reporting agency the following:

- (1) that an account maintained to effect third party payment transactions has been closed out by the institution, the reasons therefor, and the identity of the depositor or account holder;
- (2) upon the request of another financial institution any other information in the files of the institution relating to the credit experience of the reporting institution with respect to a particular person as to whom inquiry is made; and
- (3) any information concerning attempted or potential activity to defraud a financial institution or to obtain funds from a financial institution by fraudulent or other unlawful means or other information relating to individuals sought by law enforcement authorities for alleged violations of criminal laws.

Enacted by Chapter 16, 1981 General Session

7-14-4 Immunity from liability.

No depository institution making any report or communication of information authorized by this chapter shall be liable to any person for disclosing such information to any recipient authorized to receive this information under this chapter, or for any error or omission in such report or communication.

Enacted by Chapter 16, 1981 General Session

7-14-5 Reciprocal exchange of information authorized.

One or more financial institutions may jointly agree with one or more other financial institutions for the reciprocal exchange of any information authorized to be reported by the provisions of this chapter. Such reciprocal exchange of information or the acts or refusals to act of one or more recipients because of such information does not constitute a boycott or blacklist, and is not otherwise a basis for liability to any person on the part of any participant in the reciprocal exchange of information authorized by this chapter.

Amended by Chapter 378, 2010 General Session

Chapter 15
Dishonored Instruments

7-15-1 Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.

(1) As used in this chapter:

- (a) "Check" means a payment instrument on a depository institution including a:
 - (i) check;
 - (ii) draft;
 - (iii) order; or
 - (iv) other instrument.
- (b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:
 - (i) obtaining from any person any money, merchandise, property, or other thing of value; or
 - (ii) paying for any service, wages, salary, or rent.
- (c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2)

- (a) An issuer of a check is liable to the holder of the check if:
 - (i) the check:
 - (A) is not honored upon presentment; and
 - (B) is marked "refer to maker";
 - (ii) the account upon which the check is made or drawn:
 - (A) does not exist;
 - (B) has been closed; or
 - (C) does not have sufficient funds or sufficient credit for payment in full of the check; or
 - (iii)
 - (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and
 - (B) the issuer stops payment on the check with the intent to:
 - (I) fraudulently defeat a possessory lien; or
 - (II) otherwise defraud the holder of the check.
- (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
 - (i) the check amount; and
 - (ii) a service charge of \$20.

(3)

- (a) The holder of a check that has been dishonored may:
 - (i) give written or oral notice of dishonor to the issuer of the check; and
 - (ii) waive all or part of the service charge imposed under Subsection (2)(b).
- (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:
 - (i) the holder redeposits the check; and
 - (ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

- (a) the amount owed under Subsection (2)(b); and
- (b) collection costs not to exceed \$35.

(5)

- (a) A holder shall provide written notice to an issuer before:
 - (i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or

- (ii) commencing an action based upon this section.
- (b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:
 - (i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:
 - (A) the amount owed under Subsection (2)(b); and
 - (B) collection costs under Subsection (4); and
 - (ii) the holder may commence a civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.
- (6)
 - (a) Except as provided in Section 7-23-401, if the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not commence a civil action under this section if the issuer pays the holder:
 - (i) the amount owed under Subsection (2)(b);
 - (ii) the collection costs under Subsection (4);
 - (iii) an amount that:
 - (A) is equal to the greater of:
 - (I) \$50; or
 - (II) triple the check amount; and
 - (B) does not exceed the check amount plus \$250; and
 - (iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.
 - (b)
 - (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.
 - (ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).
 - (iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).
- (7)
 - (a) A holder may not commence a civil action under this section unless the issuer fails to pay the amounts owed:
 - (i) under Subsection (4); and
 - (ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.
 - (b) Subject to Subsections (7)(c) and (d) and except as provided in Section 7-23-401, in a civil action the issuer of the check is liable to the holder for:
 - (i) the amount owed under Subsection (2)(b);
 - (ii) the collection costs under Subsection (4);
 - (iii) interest;
 - (iv) court costs;
 - (v) reasonable attorney fees; and
 - (vi) damages:
 - (A) equal to the greater of:
 - (I) \$100; or
 - (II) triple the check amount; and

- (B) not to exceed the check amount plus \$500.
- (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.
- (d) If a holder of a check violates this section by commencing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.
- (e)
 - (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.
 - (ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).
 - (iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).
- (8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.
- (9)
 - (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if the holder is:
 - (i) a depository institution; or
 - (ii) a person that receives a payment on behalf of a depository institution.
 - (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Amended by Chapter 199, 2019 General Session

7-15-2 Notice -- Form.

- (1)
 - (a) "Notice" means notice given to the issuer of a check either orally or in writing.
 - (b) Written notice may be given by United States mail that is:
 - (i) first class; and
 - (ii) postage prepaid.
 - (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have been given when the notice is:
 - (i) properly deposited in the United States mail;
 - (ii) postage prepaid;
 - (iii) certified or registered mail;
 - (iv) return receipt requested; and
 - (v) addressed to the signer at the signer's:
 - (A) address as it appears on the check; or
 - (B) last-known address.
- (2) Written notice under Subsection 7-15-1(5) shall take substantially the following form:
 - "Date: _____
 - To: _____
 - You are hereby notified that the check(s) described below issued by you has (have) been returned to us unpaid:
 - Check date: _____
 - Check number: _____

Originating institution: _____

Amount: _____

Reason for dishonor (marked on check): _____

In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check together with a service charge of \$20, which must be paid to the undersigned.

If you do not pay the check amount and the \$20 service charge within 15 calendar days from the day on which this notice was mailed, you are required to pay within 30 calendar days from the day on which this notice is mailed:

- (1) the check amount;
- (2) the \$20 service charge; and
- (3) collection costs not to exceed \$35.

If you do not pay the check amount, the \$20 service charge, and the collection costs within 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be commenced against you for:

- (1) the check amount;
- (2) interest;
- (3) court costs;
- (4) attorneys' fees;
- (5) actual costs of collection as provided by law; and
- (6) damages in an amount equal to the greater of \$100 or triple the check amount,

except:

- (a) that damages recovered under this Subsection (6) may not exceed the check amount by more than \$500; and
- (b) you are not liable for these damages for a check used to obtain a deferred deposit loan.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

The civil action referred to in this notice does not preclude the right to prosecute under the criminal code of the state.

(Signed) _____

Name of Holder: _____

Address of Holder: _____

Telephone Number: _____

"

(3) Notwithstanding the other provisions of this section, a holder exempt under Subsection 7-15-1(9) is exempt from this section.

Amended by Chapter 199, 2019 General Session

7-15-3 Liability of financial institution upon wrongful dishonor.

If a person is liable to a holder under Section 7-15-1 or under a contract with a depository institution as provided in Subsection 7-15-1(9), and the liability is proximately caused by a financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial institution

under Section 70A-4-402 shall include all amounts awarded against the person to the holder under:

- (1) Section 7-15-1; or
- (2) the contract with the depository institution as provided in Subsection 7-15-1(9).

Amended by Chapter 9, 2001 General Session

Chapter 16a Automated Teller Machine Act

Part 1 General Provisions

7-16a-101 Title.

This chapter is known as the "Automated Teller Machine Act."

Enacted by Chapter 111, 1997 General Session

7-16a-102 Definitions.

As used in this chapter:

- (1) "Automated teller machine" means an electronic information processing device that:
 - (a) is readily accessible to the general public; and
 - (b) on behalf of an issuer:
 - (i) dispenses currency or coin; or
 - (ii) accepts deposits or payments.
- (2) "Customer" means a user of a device for access.
- (3) "Device for access" means a card, code, or other means of access to a customer's account, or any combination of these, that may be used to deposit or withdraw cash through an automated teller machine.
- (4) "Electronic information processing device" means equipment activated by a device for access that transmits electronic impulses to a depository institution on a real-time or delayed-time basis.
- (5) "Issuer" means:
 - (a) a depository institution that issues a device for access, whether or not the depository institution is an operator; or
 - (b) a state or federal governmental agency that issues a device for access that allows a person to receive benefits from or through the state or federal governmental agency.
- (6) "Point-of-sale terminal" means an electronic information processing device controlled by or accessible to a merchant or other provider of goods or services that authorizes:
 - (a) in payment for goods or services, a debit or credit to a customer's account at:
 - (i) a depository institution; or
 - (ii) a state or federal governmental agency; and
 - (b) the merchant or other provider of goods or services to dispense currency or coin to a customer.
- (7) "Operator" means an institution that:
 - (a)

- (i) is a depository institution;
 - (ii) is a depository institution holding company; or
 - (iii) is an institution directly or indirectly owned or controlled by one or more depository institutions or depository institution holding companies; and
- (b) owns or contracts with an owner of an automated teller machine to operate the automated teller machine.

Enacted by Chapter 111, 1997 General Session

7-16a-103 Application of chapter.

- (1) This chapter does not:
- (a) authorize a depository institution, or any other person, to engage in any transaction not otherwise specifically permitted by applicable law; or
 - (b) apply to the use of any device capable of transmitting electronic impulses that is not readily accessible to the general public for the primary purpose of initiating transactions with depository institutions.
- (2) Use of an automated teller machine to effect a transaction is only an additional means of effecting the transaction and this chapter does not limit or enlarge the rights of persons under state or federal statute or under any rules or regulations made under those statutes that govern credit or deposit account relationships.

Enacted by Chapter 111, 1997 General Session

Part 2

Authority, Powers, Contractual Waiver, and Notification Requirements

7-16a-201 Authority to operate an automated teller machine.

An automated teller machine located in this state shall be operated only by:

- (1) a depository institution;
- (2) a depository institution holding company; or
- (3) an institution directly or indirectly owned or controlled by one or more depository institutions or depository institution holding companies.

Enacted by Chapter 111, 1997 General Session

7-16a-202 Powers of depository institutions operating automated teller machines -- Fees or surcharges.

- (1) An operator may:
- (a) make an automated teller machine available for use by customers of one or more issuers;
 - (b) connect the automated teller machine with an electronic consumer funds transfer system connecting one or more depository institutions to one or more automated teller machines; and
 - (c) impose a transaction fee for the use of the automated teller machine, if the imposition of the transaction fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee.

- (2) Except for the dispensing of currency or coin or accepting deposits or payments, any service provided by an operator to a customer at the automated teller machine is not governed by this chapter.
- (3) The transaction fee permitted in Subsection (1)(c) may be in addition to any other charges imposed by any of the following entities involved in the transaction:
 - (a) an electronic consumer funds transfer system;
 - (b) a depository institution; or
 - (c) an issuer.
- (4)
 - (a) Any of the following entities may charge any or all customers any transaction fee allowed or not prohibited by state or federal law:
 - (i) a depository institution;
 - (ii) an owner;
 - (iii) an operator;
 - (iv) an issuer; or
 - (v) an electronic consumer funds transfer system.
 - (b) A transaction fee allowed under this section includes a charge to a customer conducting a transaction using an account from an institution providing financial services that is located outside of the United States.
 - (c)
 - (i) Subject to Subsection (4)(c)(ii) and to the extent not prohibited by federal law, an agreement to operate or share an automated teller machine may not prohibit, limit, or otherwise restrict a person described in Subsection (4)(a) from charging a customer for use of or access to the automated teller machine on the basis of the customer using an account from an institution providing financial services that is located outside of the United States if the charge is not otherwise prohibited under state or federal law.
 - (ii) Notwithstanding Subsection (4)(c)(i), nothing in this section may be construed to prohibit, limit, or otherwise restrict the ability of a person described in Subsection (4)(a) from voluntarily entering into an agreement to participate in a surcharge free network.

Amended by Chapter 17, 2007 General Session

7-16a-203 Contractual waiver of Uniform Commercial Code provisions.

- (1)
 - (a) Subject to Subsections (1)(b) and (2), if the application of Title 70A, Uniform Commercial Code, is inconsistent with the operation of an automated teller machine, a point-of-sale terminal, or both, the requirements of Title 70A, Uniform Commercial Code, may be varied by contractual agreement of any:
 - (i) depository institution;
 - (ii) switching facility; or
 - (iii) clearinghouse as defined by Section 70A-4-104.
 - (b) A contractual agreement under Subsection (1)(a) may not disclaim responsibility for or limit the measure of damages for a depository institution's, switching facility's, or clearing house's:
 - (i) lack of good faith; or
 - (ii) failure to exercise ordinary care.
- (2) Notwithstanding Subsection (1)(a), the commissioner may, after notice and hearing, require rescission or modification of any provision of a contractual agreement permitted by Subsection (1)(a) if:

- (a) that provision relates to the rights and obligations of:
 - (i) account holders of depository institutions;
 - (ii) merchants;
 - (iii) merchant customers; or
 - (iv) others using or having access to automated teller machines, point-of-sale terminals, or both; and
- (b) the commissioner finds the provision is unconscionable or contrary to the public interest.

Enacted by Chapter 111, 1997 General Session

7-16a-204 Department notification requirements.

- (1)
 - (a) Except as provided in Subsection (3), an operator may not operate, relocate, or discontinue operating an automated teller machine unless the operator provides notice to the department in accordance with this section.
 - (b) An operator may operate, relocate, or discontinue operating an automated teller machine 30 days from the day the department accepts the notice filed under this section as complete.
 - (c) No later than 30 days before operating, relocating, or discontinuing the operation of an automated teller machine located in this state, the operator shall notify the department of the intent to operate, relocate, or discontinue the operation of the automated teller machine.
 - (d) The notice required under Subsection (1)(a) shall state:
 - (i) if operating or relocating an automated teller machine:
 - (A) the proposed location of the automated teller machine;
 - (B) whether the proposed location is permanent or temporary; and
 - (C) the period the automated teller machine will be at the proposed location, if the location is temporary; and
 - (ii) any information requested on a form prescribed by the department.
 - (e) The department may not require the operator to pay a fee for filing the notice required under this Subsection (1).
- (2) The failure to provide notice to the department as required in Subsection (1) is a violation against which the commissioner may exercise the general enforcement powers set forth in Section 7-1-320.
- (3) This section does not apply to automated teller machines located at the main office or at a branch of a depository institution authorized to transact business in this state.
- (4) For purposes of this section, "discontinue" or "discontinuing" means an interruption in the operation of an automated teller machine of 30 days or more.

Enacted by Chapter 111, 1997 General Session

Chapter 17
Interest on Mortgage Loan Reserve Accounts

7-17-1 Legislative intent.

It is the intent of the Legislature that the provisions of this act govern the rights, duties and liabilities of borrowers and lenders with respect to reserve accounts established before and after the effective date of this act.

Enacted by Chapter 124, 1979 General Session

7-17-2 Definitions.

As used in this chapter:

- (1) "Real estate loan" means any agreement providing for a loan secured by an interest in real estate in this state containing a residential structure of not more than four housing units, at least one of which is the primary residence of the borrower and includes, but is not limited to, agreements secured by mortgages, trust deeds, and conditional land sales contracts.
- (2) "Borrower" means any person who becomes obligated on a real estate loan at the time of origination of such loan and includes mortgagors, trustors under trust deeds and vendees under conditional land sales contracts.
- (3) "Lender" means any person who regularly makes, extends or holds real estate loans and includes, but is not limited to, mortgagees, beneficiaries under trust deeds and vendors under conditional land sales contracts and who regularly require or maintain reserve accounts.
- (4) "Person" includes an individual, a commercial bank, savings bank, building and loan corporation, savings and loan association, credit union, investment company, insurance company, pension fund, mortgage company, trust company, or any other organization making real estate loans.
- (5) "Reserve account" means any account, whether denominated escrow, impound, trust, pledge, reserve or otherwise, which is established in connection with a loan secured by an interest in real estate located in this state, whether or not a real estate loan as defined in this chapter, and whether incorporated into the loan agreement or a separate document, whereby the borrower agrees to make periodic prepayment to the lender or its designee of taxes, insurance premiums or other charges pertaining to the property securing the loan and the lender or its designee agrees to pay the taxes, insurance premiums or other charges out of the account on or before their due date.
- (6) "Service charge" means any direct fee imposed in connection with the administration of a reserve account.
- (7) A loan is "made" when the lender makes its initial disbursement of the loan proceeds.

Amended by Chapter 15, 1981 General Session

7-17-3 Lender to pay interest -- Exceptions -- Service charges prohibited.

- (1) Except as provided in Subsection (2), each lender requiring the establishment or continuance of a reserve account in connection with an existing or future real estate loan shall, on a yearly basis as of December 31, calculate and credit to the account interest on the average daily balance of funds deposited in the account at a rate equal to:
 - (a) 5-1/2%;
 - (b) the average of the 11th District monthly weighted average cost of funds index as calculated and published by the Federal Home Loan Bank of San Francisco during the calendar year, less 1-1/2 percentage points; or
 - (c) the statement savings rate or share account rate offered to the public for accounts of like size by the depository institution holding the reserve account.
- (2) Subsection (1) does not apply to:

- (a) a reserve account required by a governmental insurer or guarantor of the loan as a condition of insurance or guaranty;
 - (b) a reserve account maintained in connection with a real estate loan in an original principal amount exceeding 80% of the lender's appraised value of the property at the time the loan is made, until the principal balance of the loan is paid down to 80% of the lender's appraised value at the time of the loan; or
 - (c) payment of interest or other compensation to the borrower if this payment is prohibited by federal law or regulations.
- (3) A lender may not require or impose a service charge for the administration of a reserve account.

Amended by Chapter 182, 1996 General Session

7-17-4 Options in lieu of reserve account -- Notice by lender -- Selection by borrower -- Noninterest-bearing reserve account -- Exemption.

- (1) A lender not requiring the establishment and maintenance of a reserve account shall offer the borrower the following options:
- (a) the borrower may elect to maintain a noninterest-bearing reserve account to be serviced by the lender at no charge to the borrower; or
 - (b) the borrower may manage the payment of insurance premiums, taxes and other charges for the borrower's own account.
- (2)
- (a) The lender shall give written notice of the options to the borrower:
 - (i) with respect to real estate loans existing on July 1, 1979, by notice mailed not more than 30 days after July 1, 1979; or
 - (ii) with respect to real estate loans made on or after July 1, 1979, by notice given at or prior to the closing of the loan.
 - (b) The notice required by this Subsection (2) shall:
 - (i) clearly describe the options; and
 - (ii) state that:
 - (A) a reserve account is not required by the lender;
 - (B) the borrower is legally responsible for the payment of taxes, insurance premiums, and other charges; and
 - (C) the notice is being given pursuant to this chapter.
 - (c) For real estate loans in existence on July 1, 1979, the borrower shall select one of the options prior to 60 days after July 1, 1979.
 - (d) If no option is selected prior to 60 days after July 1, 1979, the borrower will be considered to have selected the option described in Subsection (1)(a), provided, however, that the borrower at a later time may select the option described in Subsection (1)(b).
 - (e) For loans made on or after July 1, 1979, the borrower shall select one of the options at the closing.
 - (f) If the borrower selects the option described in Subsection (1)(a), the lender may not be required to account for earnings, if any, on the account.
- (3)
- (a) Subject to Subsection (3)(b), if the borrower who selects the option described in Subsection (1)(b), or the borrower's successors or assigns, fails to pay the taxes, insurance premiums, or other charges pertaining to the property securing the loan prior to the delinquency date

for such payments, the lender may require a reserve account without interest or other compensation for the use of the funds.

- (b) Notwithstanding Subsection (3)(a), the lender may not require a reserve account without interest or other compensation if:
 - (i) the borrower pays any delinquency within 30 days; and
 - (ii) the borrower has not previously been delinquent in payment of taxes, insurance premiums, or other charges.
- (4) This section does not apply to a loan made, renewed, or modified on or after May 6, 2002.

Amended by Chapter 378, 2010 General Session

7-17-5 Statements.

Every lender shall furnish to the borrower, or his successors or assigns, without charge, within 60 days after the end of each calendar year, an itemized statement showing money (1) received for interest and principal repayment and (2) received and held in or disbursed from a reserve account, if any.

Enacted by Chapter 124, 1979 General Session

7-17-6 Liability of lender for failure to pay taxes, insurance premiums, or other charges.

A lender administering a reserve account shall make timely payments of taxes, insurance premiums and other charges for which the account is established, if funds paid into the account by the borrower, his successors or assigns, are sufficient for the payments. Negligent failure to make the payments required for taxes, insurance premiums and other charges as they become due, from available funds in the reserve account, shall subject the lender to liability for all damages directly resulting from the failure; provided that this sentence does not deprive the lender of the right to present any defense it may have in any action brought to enforce the liability. Failure of the borrower or his successors or assigns to deliver promptly to the lender all notices of tax assessments and insurance premiums or other charges, received by the borrower, his successors or assigns, shall relieve the lender from liability under this section.

Amended by Chapter 378, 2010 General Session

7-17-7 Limit on amount borrower required to pay into account -- Deficiency -- Method of recouping and remedies for default.

A lender in connection with a real estate loan may not require a borrower, the borrower's successors or assigns, or a prospective borrower:

- (1) to deposit in any reserve account established in connection with the loan, prior to or upon closing, a sum exceeding the estimated total payments for taxes, insurance premiums, or other charges which will be due and payable on the date of closing, and the pro rata portion thereof which has accrued, plus 1/6th of the estimated total taxes, insurance premiums, and other charges which will become due and payable during the 12-month period beginning on the date of closing; or
- (2) to deposit in any reserve account in any month beginning after closing a sum exceeding 1/12th of the total estimated taxes, insurance premiums, or other charges which will become due and payable during the 12-month period beginning on the first day of the month plus an amount necessary to maintain the additional balance permitted in Subsection (1) in the reserve account not to exceed 1/6th of the total estimated taxes, insurance premiums, or other charges that will

become due and payable during the 12-month period beginning on the first day of the month, except that:

- (a) if the lender determines there will be a deficiency on the due date, it may require additional monthly deposits in the reserve account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of the deficiency to the date upon which the charges become due and payable;
- (b) if the lender determines there is a deficiency on or after the due date, it may:
 - (i) bill the borrower, the borrower's successors or assigns, for the deficiency, which bill shall promptly be paid;
 - (ii) add the deficiency to the principal; or
 - (iii) charge the reserve account, and require additional monthly deposits in the reserve account for up to 12 months to recoup the deficiency;
- (c) if the borrower, the borrower's successors or assigns, fails to pay any amount billed by the lender to meet the deficiency as permitted under Subsection (2)(b)(i), the lender may exercise any remedies for default contained in the real estate loan document. If such failure to pay continues for 30 days after written notice to borrower, the lender may also terminate any obligation to pay interest or to otherwise pay compensation for the use of the funds in the reserve account.

Amended by Chapter 182, 1996 General Session

7-17-8 Damages for lender's violation of act -- Limitations on recovery.

- (1) Except as otherwise provided in this act, a lender who violates this act is liable to the borrower, his successors or assigns, for the actual damages suffered by the borrower, his assigns or successors, or \$100, whichever is greater. If an action is commenced, the prevailing party may be awarded reasonable attorney's fees as determined by the court.
- (2) A lender has no liability under this section if the court finds that written demand for payment of the claim of the borrower, his successors or assigns, was made on the lender not less than 30 days before commencement of the action and that the lender tendered to the borrower, his successors or assigns, prior to the commencement of the action, an amount not less than the damages awarded.
- (3) A lender may not be held liable under this section for a violation of this act if the lender shows that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures to avoid such errors.
- (4) A reserve account established or maintained in violation of this act is voidable, at the option of the borrower, his successors or assigns, at any time, but does not otherwise affect the validity of the loan, the security interest in the real property or any other obligation of the borrower.
- (5) No action under this section may be brought more than one year after the date of the violation.

Amended by Chapter 378, 2010 General Session

7-17-9 Actions on accounts established prior to 1979 -- Limitations on recovery.

- (1) With respect to any reserve account established prior to July 1, 1979, and for which no legal action is pending as of January 1, 1979, no recovery shall be had in any action brought to require payment of interest on, or other compensation for, the use prior to July 1, 1979, of the funds in such account unless:
 - (a) An agreement in writing expressly so providing was executed by the borrower and the lender;
 - or

- (b) The borrower, or his successors or assigns, establishes by clear and convincing evidence an agreement between the parties that the lender would pay interest on or to otherwise compensate the borrower for the use of the funds in such account. Use in the loan documents of such words as "trust" or "pledge" alone does not establish the intent of the parties; and
 - (c) There is no federal law or regulation prohibiting the payment of interest on or otherwise compensating the borrower for the use of the funds in such an account.
- (2) No action seeking payment of interest on or other compensation for the use of the funds in any reserve account for any period prior to July 1, 1979, shall be brought after June 30, 1981. Any recovery in any such action shall be limited to the four-year period immediately preceding the commencement of the action. No recovery shall be had in respect of any reserve account established prior to July 1, 1979, greater than if the provisions of Section 7-17-3 of this act were applicable to such accounts.
- (3) With respect to any reserve account established prior to July 1, 1979, an agreement in writing between the lender and the borrower, or his successors or assigns, that:
- (a) the provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1, 1979; or
 - (b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his successors or assigns, for interest on or other compensation for the use of the funds in such account for any period prior to July 1, 1979.

Amended by Chapter 258, 2015 General Session

7-17-10 Applicability of act to accounts and actions thereon.

The provisions of this act shall apply:

- (1) to all reserve accounts; and
- (2) to all actions filed after January 1, 1979, to recover interest on or other compensation for the use of the funds in any reserve account whether or not the reserve accounts were established prior to or subsequent to July 1, 1979.

Enacted by Chapter 124, 1979 General Session

Chapter 18a
Utah Foreign Depository Institutions Act

Part 1
Title, Definitions, and Application of Law

7-18a-101 Title.

This chapter is known as the "Utah Foreign Depository Institutions Act."

Enacted by Chapter 63, 1996 General Session

7-18a-102 Definitions.

As used in this chapter:

- (1) "Agency" means a place of business of a foreign depository institution located in this state that is authorized to exercise the powers permitted in Section 7-18a-301.
- (2) "Branch," when used in reference to a foreign depository institution, means a place of business of a foreign depository institution located in this state that is authorized to exercise the powers permitted in Section 7-18a-301.
- (3) "Foreign person" means a person who is a citizen or national of a country, including any colony, dependency, or possession of such country, other than the United States.
- (4) "Representative office" means a place of business of a foreign depository institution located in this state that is authorized to exercise powers permitted in Section 7-18a-301.

Enacted by Chapter 63, 1996 General Session

7-18a-103 Application of Utah Revised Business Corporation Act.

A foreign depository institution authorized to transact business in this state through an agency, branch, or representative office shall comply with Title 16, Chapter 10a, Utah Revised Business Corporation Act.

Enacted by Chapter 63, 1996 General Session

7-18a-104 Application of Utah Financial Institutions Act.

A foreign depository institution authorized under Section 7-18a-201 to transact business in this state through an agency, branch, or representative office is subject to this title.

Enacted by Chapter 63, 1996 General Session

Part 2
Authorization Required to Conduct Business

7-18a-201 Authorization required to transact business as a foreign depository institution agency, branch, or representative office.

- (1) It is unlawful for a foreign depository institution to transact business in this state unless it transacts business through an agency, branch, or representative office authorized by the department or an agency of the federal government.
- (2) Notwithstanding Subsection (1), a foreign depository institution that is not authorized to transact business through an agency, branch, or representative office in this state may make or enforce loans made in this state secured by liens on real or personal property located in this state.
- (3) A foreign depository institution authorized to transact business through an agency, branch, or representative office in this state may transact business as an agent for an affiliated depository institution in accordance with Section 7-1-716.
- (4) For purposes of Subsection (1), a foreign depository institution is not considered to be transacting business in this state solely because a subsidiary or affiliate transacts business in this state, including business that any depository institution subsidiary or affiliate may lawfully conduct in this state as an agent for the foreign depository institution in accordance with the laws of this state.

Enacted by Chapter 63, 1996 General Session

7-18a-202 Application and fee to establish, relocate, or discontinue a foreign depository institution agency, branch, or representative office -- Certificate of authority.

- (1) To obtain a certificate of authority to transact business through an agency, branch, or representative office in this state, a foreign depository institution shall:
 - (a) comply with Section 7-1-708;
 - (b) provide a copy and an accurate English translation of the foreign depository institution's articles of incorporation, or equivalent, that evidences authority to transact business as a depository institution;
 - (c) provide satisfactory evidence that the foreign depository institution has complied with the laws of the chartering country authorizing the foreign depository institution to engage in the business of a depository institution;
 - (d) irrevocably designate the commissioner as the foreign depository institution's agent for service of process;
 - (e) provide a written certificate of designation that specifies the name and address of the person to whom the commissioner shall forward any process that has been served; and
 - (f) pay to the department a filing fee as required by Subsection 7-1-401(6).
- (2) The written certificate of designation, required in Subsection (1)(e) may be changed from time to time by filing a new certificate of designation.
- (3) To obtain authorization to relocate an authorized agency, branch, or representative office in this state, a foreign depository institution shall comply with Section 7-1-708.
- (4)
 - (a) To obtain authorization to discontinue an agency, branch, or representative office in this state, a foreign depository institution shall comply with Section 7-1-709.
 - (b) Upon notice of authorization to discontinue an agency, branch, or representative office and the satisfaction of all conditions precedent to discontinuance, the foreign depository institution may close the agency, branch, or representative office and promptly surrender to the commissioner the certificate of authority.
- (5) If the commissioner authorizes a foreign depository institution to transact business through an agency, branch, or representative office in this state, the commissioner shall issue a certificate of authority that states:
 - (a) fully the name of the foreign depository institution to which the certificate of authority is issued;
 - (b) the address at which the agency, branch, or representative office of the foreign depository institution is to be located;
 - (c) the authority granted to the foreign depository institution;
 - (d) the effective and expiration dates of the certificate of authority; and
 - (e) any other information required by the commissioner.
- (6) Each foreign depository institution agency, branch, or representative office shall display the certificate of authority issued by the commissioner in a conspicuous place at the place of business specified in the certificate.
- (7) A certificate of authority is neither transferable nor assignable.

Enacted by Chapter 63, 1996 General Session

7-18a-203 No concurrent maintenance of agencies or branches.

- (1) A foreign depository institution authorized under this chapter to transact business through an agency or branch may not concurrently transact business in this state through an agency or branch authorized under federal law.
- (2) A foreign depository institution authorized under federal law to transact business through an agency or branch in this state may not concurrently transact business through an agency or branch authorized under this chapter.
- (3) A foreign depository institution authorized to transact business through an agency may not concurrently transact business through a branch in this state.
- (4) A foreign depository institution authorized to transact business through a branch may not concurrently transact business through an agency in this state.
- (5) Subsections (1) through (4) do not prohibit a foreign depository institution authorized to transact business through an agency or branch in this state from transacting business through a representative office.

Enacted by Chapter 63, 1996 General Session

7-18a-204 Filing of amendments to articles of incorporation.

- (1) If a foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office amends its articles of incorporation, the institution shall file with the department a copy and an accurate English translation of the amendment authenticated by the appropriate officer of the chartering country.
- (2) Without obtaining an amended certificate of authority under Section 7-18a-205, the filing of the amendment may not:
 - (a) enlarge or alter the purpose for which the foreign depository institution is authorized to transact business in this state;
 - (b) authorize the foreign depository institution to transact business in this state under any name other than the name set forth in the certificate of authority issued by the department; or
 - (c) extend the duration of the foreign depository institution's corporate existence.

Enacted by Chapter 63, 1996 General Session

7-18a-205 Amended certificate of authority to establish an agency, branch, or representative office.

- (1) A foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office shall secure an amended certificate of authority if it:
 - (a) changes its corporate name;
 - (b) changes the duration of its corporate existence; or
 - (c) desires to expand or contract the purposes set forth in the foreign depository institution's prior application for certificate of authority.
- (2) An application for an amended certificate of authority shall be filed with the department in a form prescribed by the commissioner.

Enacted by Chapter 63, 1996 General Session

7-18a-206 Change of control of foreign depository institution.

A foreign depository institution authorized by this state to transact business through an agency, branch, or representative office in this state shall file with the commissioner a notice, in such form

and containing such information as the commissioner may prescribe, no later than 14 days after the change of control of the foreign depository institution.

Enacted by Chapter 63, 1996 General Session

7-18a-207 Annual renewal of certificate of authority.

- (1) A foreign depository institution may renew a certificate of authority, issued under Section 7-18a-202, to transact business in this state through an agency, branch, or representative office in a form prescribed by the commissioner.
- (2) The application for renewal shall be submitted to the department no later than 60 days before the expiration of the certificate of authority.
- (3) The certificate of authority may be renewed by the commissioner upon a determination, with or without examination, that the foreign depository institution:
 - (a) is in a safe and sound condition; and
 - (b) has complied with applicable provisions of the law.
- (4) An application for renewal of certificate of authority shall be accompanied by the annual fee required by Subsection 7-1-401(5).

Amended by Chapter 260, 2000 General Session

**Part 3
Powers**

7-18a-301 Powers of an agency, branch, or representative office of a foreign depository institution.

- (1) Subject to the limitations set forth in Subsections (2) and (3), and notwithstanding any other law of this state, a foreign depository institution authorized by this state to transact business through an agency or branch shall transact business with the same rights, privileges, and powers as a Utah depository institution and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of this state to a Utah depository institution.
- (2) The general rights, powers, and privileges of a foreign depository institution authorized by this state to transact business through an agency or branch set forth in Subsection (1) are limited to the following:
 - (a) An agency may not accept any deposits from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful powers, but it may accept deposits from persons who are neither citizens nor residents of the United States.
 - (b) An agency may pay checks or loan money.
 - (c) A branch operating in this state may not accept from citizens or residents of the United States deposits, other than credit balances that are incidental to or arise out of its exercise of other lawful powers, of less than \$100,000.
 - (d) An agency or branch is not required to maintain federal deposit insurance.
 - (e) After considering the applicable limitations on the retail deposit-taking powers and privileges of an agency or branch of a foreign depository institution, the commissioner may, by rule or

order, modify the applicability to an agency or branch, of any law of this state that is generally applicable to insured depository institutions doing business in this state.

- (f) The commissioner may adopt such additional standards, conditions, or requirements, or modify the applicability of any existing standards, conditions, or requirements, by rule or order, as the commissioner may consider necessary to ensure the safety and soundness and the protection of creditors of the operations of an agency or branch of a foreign depository institution in this state.
- (3) A foreign depository institution authorized by this state to transact business through a representative office may only:
 - (a) engage in loan production office activities authorized by Section 7-1-715;
 - (b) solicit new business;
 - (c) conduct research; or
 - (d) perform administrative functions expressly permitted by rule or order.

Amended by Chapter 378, 2010 General Session

7-18a-302 Trust business.

A foreign depository institution may not engage in the trust business, as defined in Section 7-5-1, in this state.

Enacted by Chapter 63, 1996 General Session

**Part 4
Operation**

7-18a-401 Separate assets.

- (1) Each foreign depository institution authorized to transact business in this state through an agency or branch shall keep the assets of its business in this state separate and apart from the assets of its business outside this state.
- (2) The creditors of a foreign depository institution authorized to transact business in this state through an agency or branch arising out of transactions with, and recorded on the books of, the agency or branch shall be entitled to absolute preference and priority over the creditors of the foreign depository institution's offices located outside this state with respect to the assets of the foreign depository institution in this state.

Enacted by Chapter 63, 1996 General Session

7-18a-402 Disclosure of lack of deposit insurance.

Each foreign depository institution authorized to transact business in this state through an agency or branch shall give notice to the customers of the foreign depository institution, as prescribed by rule or order, that deposits and credit balances in the agency or branch are not insured by a federal deposit insurance agency.

Enacted by Chapter 63, 1996 General Session

7-18a-403 Asset maintenance.

- (1) Each foreign depository institution authorized to transact business in this state through an agency or branch shall hold assets in this state consisting of currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations that are payable:
 - (a) in the United States in United States funds; or
 - (b) with the prior approval of the commissioner, in funds freely convertible into United States funds.
- (2) The amount of assets required in Subsection (1) shall be in an amount not less than 108% of the aggregate amount of liabilities of the foreign depository institution appearing in the books, accounts, or records of its agency or branch located in this state, including acceptances, but excluding amounts due and other liabilities to other offices, agencies, or branches of, and wholly owned, except for a nominal number of directors' shares, subsidiaries of, the foreign depository institution, and such other liabilities as the commissioner shall determine.
- (3) For the purposes of this section, the commissioner:
 - (a) shall value marketable securities at principal amount or market value, whichever is lower;
 - (b) may determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness or other asset or obligation held by or owed to the foreign depository institution in this state; and
 - (c) in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities in Subsection (2), may exclude in whole or in part any particular asset.
- (4) The commissioner may require a foreign depository institution to deposit the assets required to be held in this state pursuant to this section with a Utah depository institution designated by the commissioner if, because of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner considers it necessary or desirable:
 - (a) for the maintenance of a sound financial condition;
 - (b) for the protection of depositors, creditors, and the public interest; or
 - (c) to maintain public confidence in the business of an agency or branch.
- (5) The assets held to satisfy the ratio of assets to liabilities prescribed by this section, shall include obligations of any person for money borrowed from an agency or branch of a foreign depository institution authorized to transact business in this state only to the extent that the total of these obligations of any person are not more than 10% of the assets considered for purposes of this section.

Enacted by Chapter 63, 1996 General Session

Part 5

Possession of Foreign Depository Institutions by Commissioner

7-18a-501 Supervisory actions by commissioner.

A foreign depository institution authorized by this state to transact business in this state through an agency, branch, or representative office is subject to supervisory actions by the commissioner under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, if the commissioner, with or without an administrative hearing, finds:

- (1) any of the circumstances set forth in Section 7-2-1;

- (2) that the foreign depository institution is transacting business in or outside this state in an unsafe and unsound manner;
- (3) that the foreign depository institution or its agency, branch, or representative office is in an unsafe and unsound condition;
- (4) that the foreign depository institution has ceased to operate its agency, branch, or representative office without the prior approval of the commissioner as required in Section 7-18a-202;
- (5) that the foreign depository institution or its agency or branch has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- (6) that the foreign depository institution or its agency or branch has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any foreign or domestic bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under such law against the foreign depository institution and the foreign depository institution has by any affirmative act approved of or consented to such action or such relief has been granted;
- (7) that a receiver, liquidator, or conservator has been appointed for the foreign depository institution, or that any proceeding for such an appointment or any similar proceeding has been initiated in the chartering country;
- (8) that the foreign depository institution's existence or authority to transact depository institution business under the laws of the chartering country has been suspended or terminated; or
- (9) that any fact or condition exists that, if it had existed at the time when the foreign depository institution applied for a certificate of authority to transact business through an agency, branch, or representative office in this state, would have been grounds for denying the application.

Enacted by Chapter 63, 1996 General Session

7-18a-502 Distribution of balance of assets.

- (1) This section supersedes Subsection 7-2-15(3).
- (2) When the commissioner has paid claims of each depositor and creditor of the foreign depository institution's agency or branch in this state whose claims have been proved and allowed the full amount of the claim, the commissioner shall transfer any remaining assets to the foreign depository institution in accordance with orders issued by the court.
- (3)
 - (a) Notwithstanding Subsection (2), if the foreign depository institution has an office in another state of the United States that is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency.
 - (b) If the foreign depository institution has two or more offices in a state other than this state and the assets of each office appear to be insufficient to pay in full the creditors of each office, and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of the offices in a manner the court finds equitable.

Enacted by Chapter 63, 1996 General Session

Chapter 19

Acquisition of Failing Depository Institutions or Holding Companies

7-19-1 Definitions.

As used in this chapter:

- (1) "Failing or failed depository institution" means a depository institution under the jurisdiction of the department:
 - (a) regarding which the commissioner makes a finding that any of the conditions set forth in Subsections 7-2-1(1)(a) through (k) exist;
 - (b) that meets the requirements of Subsection 7-2-1(1)(l);
 - (c) whose shareholders have consented to a supervisory action by the commissioner pursuant to Subsection 7-2-1(2); or
 - (d) which is in the possession of the commissioner, or any receiver or liquidator appointed by the commissioner, pursuant to Chapter 2, Possession of Depository Institution by Commissioner.
- (2) "Failing or failed depository institution holding company" means a depository institution holding company under the jurisdiction of the department:
 - (a) regarding which the commissioner makes a finding that any of the conditions set forth in Subsections 7-2-1(1)(a) through (k) exist;
 - (b) that meets the requirements of Subsection 7-2-1(1)(l);
 - (c) whose shareholders have consented to a supervisory action by the commissioner pursuant to Subsection 7-2-1(2);
 - (d) which is in the possession of the commissioner, or any receiver or liquidator appointed by the commissioner, pursuant to Chapter 2, Possession of Depository Institution by Commissioner; or
 - (e) whose subsidiary depository institution is a failing or failed depository institution.
- (3) "Supervisory acquisition" means the acquisition of control, the acquisition of all or a portion of the assets, or the assumption of all or a portion of the liabilities, pursuant to Section 7-2-1, 7-2-12, or 7-2-18, of a failing or failed depository institution or a failing or failed depository institution holding company, whether or not in the possession of the commissioner, by:
 - (a) a Utah depository institution;
 - (b) an out-of-state depository institution;
 - (c) a Utah depository institution holding company; or
 - (d) an out-of-state depository institution holding company.
- (4) "Supervisory merger" means the merger or consolidation, pursuant to Section 7-2-1, 7-2-12, or 7-2-18 of a failing or failed depository institution or a failing or failed depository institution holding company, whether or not in the possession of the commissioner, with:
 - (a) a Utah depository institution;
 - (b) an out-of-state depository institution;
 - (c) a Utah depository institution holding company; or
 - (d) an out-of-state depository institution holding company.

Amended by Chapter 189, 2014 General Session

7-19-2 Supervisory acquisition or merger authorized or required by commissioner.

Notwithstanding any provision of law to the contrary, the commissioner, or any receiver or liquidator appointed by the commissioner, may solicit offers from and authorize, require, or give

effect to, a supervisory acquisition of, or a supervisory merger with respect to a failing or failed depository institution or failing or failed depository institution holding company by a Utah depository institution, an out-of-state depository institution, a Utah depository institution holding company, or an out-of-state depository institution holding company.

Amended by Chapter 49, 1995 General Session

7-19-3 Waiver of procedures.

The commissioner may waive any of the procedures of Section 7-1-705 or any regulation of the department if he considers it necessary to protect the interest of depositors, creditors, and other customers of a failing or failed depository institution or failing or failed depository institution holding company in a supervisory merger or a supervisory acquisition.

Amended by Chapter 1, 1986 General Session

7-19-4 Rights and powers of acquired or resulting institution or holding company.

Any depository institution or depository institution holding company acquired, or the resulting institution in a merger under the provisions of this chapter, has all the rights, powers, and privileges of any other depository institution of the same class under the laws of this state, the rules of the department, the applicable laws of the United States or any other state, and the rules and regulations of the primary federal regulatory agency with jurisdiction over that institution. These rights, powers, and privileges include, but are not limited to, acquiring control of, merging with, acquiring all or a portion of the assets of, or assuming all or a portion of the liabilities of, a Utah depository institution or Utah depository institution holding company.

Amended by Chapter 1, 1986 General Session

7-19-5 Findings prerequisite to requiring or authorizing supervisory acquisitions or mergers by commissioner.

The commissioner may not authorize or require any transaction pursuant to Section 7-19-2 unless he determines that:

- (1) the acquiring or resulting depository institution or depository institution holding company has demonstrated an acceptable record of meeting the credit needs of the communities which it serves; and
- (2) the acquiring or resulting depository institution or depository institution holding company has a record of sound performance, capital adequacy, financial capacity, and efficient management such that the acquisition or merger will not jeopardize the financial stability of the acquired or merged depository institution and will not be detrimental to the interests of depositors, creditors, other customers of the depository institution, or to the public.

Amended by Chapter 1, 1986 General Session

7-19-5.5 Transferred assets free of encumbrances.

- (1) Any institution or other person to whom assets, business, and property are transferred pursuant to a supervisory merger or a supervisory acquisition shall take those assets, business, and property:
 - (a) free and clear of all liens, claims, and encumbrances that have been avoided or disallowed by the commissioner under Sections 7-2-6 and 7-2-12;

- (b) free and clear of all unperfected liens, claims, and encumbrances pertaining to the assets, business, and property, except to the extent expressly assumed by the transferee; and
 - (c) subject to all allowed perfected liens, claims, security interests, and encumbrances relating to such assets, business, and property.
- (2) Only those deposit liabilities and other liabilities, claims, and obligations of or against the transferring institution, its officers, directors, employees, and agents which are expressly assumed by the transferee shall be transferred or assigned pursuant to a supervisory merger or a supervisory acquisition. In addition, no such transferee shall be liable for any claim or obligation made against or attributable to acts or omissions of the commissioner, the department, or any of their agents, arising out of or related to the supervisory merger or the supervisory acquisition.

Amended by Chapter 229, 1987 General Session

7-19-9 Commissioner's powers not limited -- Immunity -- Rules -- Reports.

- (1) This chapter does not limit any power otherwise granted to the commissioner or to any depository institution or depository institution holding company by the laws of this state.
- (2) The commissioner is not subject to any civil liability or penalty nor to any criminal prosecution for any error in judgment or discretion in any action taken or omitted by him in good faith under the provisions of this chapter.
- (3) The commissioner may promulgate such rules and regulations as may be necessary to implement this chapter.
- (4) By January 10 of each year, the commissioner shall report to the governor and the Legislature the nature and general terms and conditions of any supervisory acquisition or supervisory merger effectuated under the provisions of this chapter during the preceding year.

Enacted by Chapter 5, 1984 Special Session 2

Enacted by Chapter 5, 1984 Special Session 2

Chapter 22
Regulation of Independent Escrow Agents

7-22-101 Definitions -- Exemptions.

- (1) As used in this chapter:
 - (a) "Escrow" means an agreement, express or implied, that provides for one or more parties to deliver or entrust money, a certificate of deposit, a security, a negotiable instrument, a deed, or other property or asset to another person to be held, paid, or delivered in accordance with terms and conditions prescribed in the agreement.
 - (b) "Escrow agent" means a person that provides or offers to provide escrow services to the public.
 - (c) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
- (2) This chapter does not apply to:
 - (a) a trust company authorized to engage in the trust business in Utah in accordance with Chapter 5, Trust Business;

- (b) a person other than an escrow agent regulated under this chapter that is exempted from the definition of trust business in Subsection 7-5-1(1);
- (c) a depository institution chartered by a state or the federal government that is engaged in business as a depository institution in Utah;
- (d) the Utah Board of Higher Education, the Utah Higher Education Assistance Authority, or the State Treasurer; and
- (e) a person licensed under Title 31A, Insurance Code.

Amended by Chapter 365, 2020 General Session

7-22-102 Authorization required.

Without prior authorization by the department, no person may perform escrow services, offer to perform escrow services, advertise that it performs escrow services, use the word "escrow" in a business name, or do any other thing that might reasonably cause anyone to believe that the person performs escrow services.

Enacted by Chapter 133, 1991 General Session

7-22-103 Registration -- Fees -- Qualifications -- Rulemaking.

- (1)
 - (a) An escrow agent shall register with the department annually on or before December 31 of each year and pay a registration fee of \$100.
 - (b) Registration of an escrow agent in accordance with this section includes all directors, officers, employees, and representatives of the escrow agent while acting in the course of the escrow agent's business.
- (2) To register under this chapter an escrow agent shall provide the department:
 - (a) evidence satisfactory to the commissioner that the person is registered with the nationwide database;
 - (b) a financial statement; and
 - (c) any other information requested by the department.
- (3) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

Amended by Chapter 284, 2015 General Session

7-22-104 Net worth requirements.

An escrow agent shall at all times maintain a positive net worth no less than the greater of \$50,000 or 10% of the agent's average daily escrow liabilities during the preceding 12 months, or during all preceding operations if less than 12 months. For purposes of this section, net worth shall be calculated in accordance with generally accepted accounting principles.

Enacted by Chapter 133, 1991 General Session

7-22-105 Bond required.

- (1) Before furnishing any escrow services, each escrow agent shall file with the commissioner a surety bond in accordance with the following schedule:

	Monthly Average	Minimum
	Escrow Liability	Surety Bond
	Up to \$10,000	\$10,000
	\$10,001 to 20,000	\$20,000
	\$20,001 to 30,000	\$30,000
	\$30,001 to 40,000	\$40,000
	Above \$40,000	\$50,000

- (2) The surety bond shall name as beneficiaries:
- this state for payment of any costs incurred and charges made in connection with any escrow agent's insolvency or default, including costs and charges relating to an examination and receivership of any escrow agent; and
 - when all claims and charges of the state have been paid in full, any person who has a claim against the surety on the bond based on any default or violation of any duty or obligation of the escrow agent.
- (3) The total aggregate liability on the bond from all claims including legal fees and other costs incurred in connection with the bond may not exceed the amount of the bond.
- (4) An applicant for registration as an escrow agent may, in lieu of and subject to the same surety conditions described in Subsection (2), deposit assets with or provide a letter of credit to the commissioner in the amount of the minimum surety bond required in Subsection (1).

Amended by Chapter 182, 1996 General Session

7-22-106 Accounts to be maintained -- Records open to inspection -- Retention of records.

- (1) Each escrow agent shall maintain in its main office sufficient books, accounts, and records for the department to determine at any time the escrow agent's financial condition, what duties and responsibilities the escrow agent has undertaken to perform and whether it is properly performing all such duties, and any other information considered necessary to determine whether the escrow agent is operating in a safe, competent, and lawful manner. The books, accounts, and records shall be maintained in accordance with generally accepted accounting principles and good business practice.
- (2) For each individual escrow account, the escrow agent shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence, and an individual ledger reflecting all activity pertinent to that account.
- (3) Each escrow agent shall continuously maintain the following general accounts:
- a general ledger reflecting assets, liabilities, income, expense, and equity accounts;
 - an escrow liability control ledger for all escrow accounts;
 - a cash receipts and disbursements journal; and
 - copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.
- (4) The records referred to in this section shall be reconciled at least monthly.
- (5) All records pertaining to individual escrow accounts in Subsection (2) shall be maintained by the escrow agent for six years following the close of each account. All records relating to general accounts required in Subsection (3) shall be maintained for six years after the end of the fiscal year to which they relate.

Enacted by Chapter 133, 1991 General Session

7-22-107 Examinations.

The department may examine an escrow agent at any time. The scope and frequency of examinations shall be determined solely in the discretion of the department. In addition to annual registration fees, each escrow agent shall pay per diem assessments incident to an examination in accordance with Section 7-1-401.

Enacted by Chapter 133, 1991 General Session

7-22-108 Segregation of accounts -- Duties specified by agreement -- Duties generally.

- (1) Each escrow agent shall place all funds received in escrow into separate federally insured depository accounts specifically denominated as trust accounts and shall allow no other funds to be placed into a trust account for any purpose. Funds may be paid from trust accounts only in accordance with the terms and conditions of the escrow agreement. An agent may maintain a general trust account and individual accounts for specific escrows in the agent's discretion, subject to any specific terms and conditions of an escrow agreement. Earnings on funds held in an escrow trust account may be periodically dispersed to the escrow agent if the escrow contract specifically provides for such disbursements. Otherwise, earnings on funds held in escrow may be paid out of the escrow account to any other party in accordance with the provisions of the escrow agreement if the agreement does not otherwise provide for payment of the earnings or any portion of the earnings on the escrow funds.
- (2) All other assets or property received by an escrow agent in accordance with an escrow agreement shall be maintained in a manner which will reasonably preserve and protect the property from loss, theft, or damage, and which will otherwise comply with all duties and responsibilities of a fiduciary or bailee generally.

Enacted by Chapter 133, 1991 General Session

7-22-109 Priority of claims in case of insolvency.

If the commissioner takes possession of the business and property of the escrow agent in accordance with Title 7, Chapter 2, Possession of Depository Institution by Commissioner, or if the escrow agent files or is involuntarily placed into bankruptcy, or if a receiver, conservator, or liquidator is appointed to administer the affairs of the escrow agent, the claims of persons for losses relating to funds or property held in escrow shall have the same priority as claims of depositors in Section 7-2-15.

Enacted by Chapter 133, 1991 General Session

Chapter 23
Check Cashing and Deferred Deposit Lending Registration Act

Part 1
General Provisions

7-23-101 Title.

This chapter is known as the "Check Cashing and Deferred Deposit Lending Registration Act."

Amended by Chapter 96, 2008 General Session

7-23-102 Definitions.

As used in this chapter:

- (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.
- (2) "Business of cashing checks" means cashing a check for consideration.
- (3) "Business of deferred deposit lending" means extending a deferred deposit loan.
- (4) "Check" is as defined in Section 70A-3-104.
- (5) "Check casher" means a person that engages in the business of cashing checks.
- (6) "Deferred deposit lender" means a person that engages in the business of deferred deposit lending.
- (7) "Deferred deposit loan" means a transaction where:
 - (a) a person:
 - (i) presents to a deferred deposit lender a check written on that person's account; or
 - (ii) provides written or electronic authorization to a deferred deposit lender to effect a debit from that person's account using an electronic payment; and
 - (b) the deferred deposit lender:
 - (i) provides the person described in Subsection (7)(a) an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and
 - (ii) agrees not to cash the check or process the debit until a specific date.
- (8)
 - (a) "Electronic payment" means an electronic method by which a person:
 - (i) accepts a payment from another person; or
 - (ii) makes a payment to another person.
 - (b) "Electronic payment" includes a payment made through:
 - (i) an automated clearing house transaction;
 - (ii) an electronic check;
 - (iii) a stored value card; or
 - (iv) an Internet transfer.
- (9) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements for mortgage loan originators.
- (10)
 - (a) "Refinance" means a new deferred deposit loan transaction whose proceeds are meant to satisfy the term or amount owed on an existing deferred deposit loan.
 - (b) "Refinance" does not mean:
 - (i) an extended payment plan under Section 7-23-403; or
 - (ii) a rollover.
- (11) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Amended by Chapter 37, 2017 General Session

7-23-103.1 Exemptions.

The following are not subject to the requirements of this chapter:

- (1) a depository institution;
- (2) a depository institution holding company;
- (3) an institution directly or indirectly owned or controlled by one or more:
 - (a) depository institutions; or
 - (b) depository institution holding companies; or
- (4) a person that cashes a check in a transaction:
 - (a) that is incidental to a retail sale of goods or services; and
 - (b) for consideration that does not exceed the greater of:
 - (i) 1% of the amount of the check; or
 - (ii) \$1.

Renumbered and Amended by Chapter 96, 2008 General Session

7-23-104.1 No effect on civil liability.

Nothing in this chapter is intended to limit any civil liability that may exist against a check casher or deferred deposit lender for:

- (1) breach of contract;
- (2) violation of federal law; or
- (3) other unlawful act.

Renumbered and Amended by Chapter 96, 2008 General Session

Part 2 Registration Requirements

7-23-201 Registration -- Rulemaking.

- (1)
 - (a) It is unlawful for a person to engage in the business of cashing checks or the business of deferred deposit lending in Utah or with a Utah resident unless the person:
 - (i) registers with the department in accordance with this chapter; and
 - (ii) maintains a valid registration.
 - (b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of:
 - (i) cashing checks; or
 - (ii) deferred deposit lending.
 - (c) An officer or employee of a person required to register under Subsection (1)(a) is not required to register if the person for whom the individual is an officer or employee is registered.
- (2)
 - (a) A registration and a renewal of a registration expires on December 31 of each year unless on or before that date the person renews the registration.
 - (b) To register under this section, a person shall:
 - (i) pay an original registration fee established under Subsection 7-1-401(8);
 - (ii) submit a registration statement containing the information described in Subsection (2)(d);
 - (iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Unincorporated Business Entity Act; and

- (iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.
- (c) To renew a registration under this section, a person shall:
 - (i) pay the annual fee established under Subsection 7-1-401(5);
 - (ii) submit a renewal statement containing the information described in Subsection (2)(d);
 - (iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Unincorporated Business Entity Act;
 - (iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database; and
 - (v) if the person engages in the business of deferred deposit lending, submit an operations statement containing the information described in Subsections (2)(e) and (f).
- (d) A registration or renewal statement shall state:
 - (i) the name of the person;
 - (ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);
 - (iii) the address of the person's principal business office, which may be outside this state;
 - (iv) the addresses of all offices in this state at which the person conducts the business of:
 - (A) cashing checks; or
 - (B) deferred deposit lending;
 - (v) if the person conducts the business of cashing checks or the business of deferred deposit lending in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;
 - (vi) the name and address in this state of a designated agent upon whom service of process may be made;
 - (vii) whether there is a conviction of a crime:
 - (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and
 - (B) with respect to that person, an officer, director, manager, operator, or principal of that person, or an employee of that person engaged in the business described in this chapter; and
 - (viii) any other information required by the rules of the department.
- (e) An operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:
 - (i) the average principal amount of the deferred deposit loans extended by the deferred deposit lender;
 - (ii) for deferred deposit loans paid in full, the average number of days a deferred deposit loan is outstanding for the duration of time that interest is charged;
 - (iii) the total number of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
 - (iv) of the persons to whom the deferred deposit lender extended a deferred deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403;
 - (v) the total dollar amount of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
 - (vi) the average annual percentage rate charged on deferred deposit loans;
 - (vii) the range of annual percentage rates charged on deferred deposit loans;

- (viii) the average dollar amount of extended payment plans entered into under Section 7-23-403 by the deferred deposit lender;
 - (ix) the number of deferred deposit loans carried to the maximum 10 weeks after the day on which the deferred deposit loan is extended;
 - (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks after the day on which the deferred deposit loan is extended;
 - (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks after the day on which the deferred deposit loan is extended;
 - (xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10 weeks after the day on which the deferred deposit loan is extended;
 - (xiii) the percentage of deferred deposit loans against which the deferred deposit lender initiates civil action to collect on the deferred deposit loan; and
 - (xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those civil actions whose deferred deposit loans have the following payment history:
 - (A) no payments;
 - (B) one payment;
 - (C) two payments;
 - (D) three payments;
 - (E) four payments;
 - (F) five payments;
 - (G) six payments;
 - (H) seven payments;
 - (I) eight payments;
 - (J) nine payments; and
 - (K) 10 or more payments.
- (f) In addition to the information in Subsection (2)(e), an operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:
- (i) the total number of deferred deposit loans extended by the deferred deposit lender;
 - (ii) the total dollar amount of deferred deposit loans extended by the deferred deposit lender;
 - (iii) the total number of individuals to whom the deferred deposit lender extended a deferred deposit loan; and
 - (iv) the percentage of deferred deposit loans not repaid according to the terms of the loan.
- (g) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.
- (3)
- (a) Information provided by a deferred deposit lender under Subsections (2)(e) and (f) is:
 - (i) confidential in accordance with Section 7-1-802; and
 - (ii) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.
 - (b) The department shall:
 - (i) only use information a deferred deposit lender provides to the department under Subsection (2)(f) to determine compliance with this chapter; and
 - (ii) delete or otherwise destroy information a deferred deposit lender provides to the department under Subsection (2)(f) within two years after the day on which the deferred deposit lender provides the information.
- (4)

- (a) The commissioner may impose an administrative fine determined under Subsection (4)(b) on a person if:
 - (i) the person is required to be registered under this chapter;
 - (ii) the person fails to register or renew a registration in accordance with this chapter;
 - (iii) the department notifies the person that the person is in violation of this chapter for failure to be registered; and
 - (iv) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (4)(a)(iii).
 - (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:
 - (i) \$500 if the person:
 - (A) has no office in this state at which the person conducts the business of:
 - (I) cashing checks; or
 - (II) deferred deposit lending; or
 - (B) has one office in this state at which the person conducts the business of:
 - (I) cashing checks; or
 - (II) deferred deposit lending; or
 - (ii) if the person has two or more offices in this state at which the person conducts the business of cashing checks or the business of deferred deposit lending, \$500 for each office at which the person conducts the business of:
 - (A) cashing checks; or
 - (B) deferred deposit lending.
 - (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if the person shows good cause.
- (5) If the information in a registration, renewal, or operations statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:
- (a) that person is required to renew the registration; or
 - (b) the department specifically requests earlier notification.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for:
- (a) the form, content, and filing of a registration and renewal statement described in Subsection (2)(d); and
 - (b) the form and filing of an operations statement described in Subsection (2)(e).
- (7) A deferred deposit loan that is made by a person who is required to be registered under this chapter but who is not registered is void, and the person may not collect, receive, or retain any principal or other interest or fees in connection with the deferred deposit loan.
- (8)
- (a) At the time a person registers under this section, the person shall disclose a conviction of a crime described in Subsection (2)(d)(vii) that is:
 - (i) known to the person; or
 - (ii) included in:
 - (A) a Utah Bureau of Criminal Identification report; or
 - (B) a background check acceptable to the department that provides information similar to a Utah Bureau of Criminal Identification report.
 - (b) To comply with Subsection (8)(a), a person registered under this chapter shall, for each individual described in Subsection (2)(d)(vii):
 - (i) obtain a Utah Bureau of Criminal Identification report; or
 - (ii) conduct a background check acceptable to the commissioner that provides information similar to a Utah Bureau of Criminal Identification report.

- (c) A person registered under this section shall keep a record of the information described in Subsection (8)(b) for the time period required by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 121, 2020 General Session

Part 3 Check Cashing Operations

7-23-301 Posting of fee schedules for cashing checks.

- (1) A check casher shall post a complete schedule of all fees for cashing a check in a conspicuous location on its premises that can be viewed by a person cashing a check.
- (2) The schedule of fees required to be posted under Subsection (1) shall state the fees using dollar amounts.

Renumbered and Amended by Chapter 96, 2008 General Session

Part 4 Deferred Deposit Lending Operations

7-23-401 Operational requirements for deferred deposit loans.

- (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender shall:
 - (a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:
 - (i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;
 - (ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and
 - (iii) a list of states where the deferred deposit lender is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;
 - (b) enter into a written contract for the deferred deposit loan;
 - (c) conspicuously disclose in the written contract:
 - (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
 - (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
 - (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;
 - (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed; and

- (v)
 - (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-201(2)(d)(vi); and
 - (B) a statement that service of process may be made to the designated agent;
 - (d) provide the person seeking the deferred deposit loan:
 - (i) a copy of the written contract described in Subsection (1)(c); and
 - (ii) written notice that the person seeking the deferred deposit loan is eligible to enter into an extended payment plan described in Section 7-23-403;
 - (e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:
 - (i) the amount of any interest rate or fee;
 - (ii) the date on which the full amount of the deferred deposit loan is due;
 - (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
 - (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
 - (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and
 - (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed;
 - (f) comply with the following as in effect on the date the deferred deposit loan is extended:
 - (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;
 - (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;
 - (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and
 - (iv) Title 70C, Utah Consumer Credit Code;
 - (g) in accordance with Subsection (6), make an inquiry to determine whether a person attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers or extended payment plans as allowed under this chapter;
 - (h) in accordance with Subsection (7), receive a signed acknowledgment from a person attempting to receive a deferred deposit loan that the person has the ability to repay the deferred deposit loan, which may include rollovers or extended payment plans as allowed by this chapter; and
 - (i) report the original loan amount, payment in full, or default of a deferred deposit loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with procedures established by the consumer reporting agency.
- (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:
- (a) in a conspicuous manner; and
 - (b) prior to the person entering into the deferred deposit loan.

- (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:
- (a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and
 - (b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next business day following the deferred deposit loan transaction.
- (4) A deferred deposit lender that engages in a deferred deposit loan may not:
- (a) collect additional interest on a deferred deposit loan with an outstanding principal balance 10 weeks after the day on which the deferred deposit loan is executed;
 - (b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;
 - (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from the day on which the deferred deposit loan is first executed;
 - (d) extend a new deferred deposit loan to a person on the same business day that the person makes a payment on another deferred deposit loan if:
 - (i) the payment results in the principal of that deferred deposit loan being paid in full; and
 - (ii) the combined terms of the original deferred deposit loan and the new deferred deposit loan total more than 10 weeks of consecutive interest;
 - (e) avoid the limitations of Subsections (4)(a) and (4)(c) by extending a new deferred deposit loan whose proceeds are used to satisfy or refinance any portion of an existing deferred deposit loan;
 - (f) threaten to use or use the criminal process in any state to collect on the deferred deposit loan;
 - (g) in connection with the collection of money owed on a deferred deposit loan, communicate with a person who owes money on a deferred deposit loan at the person's place of employment if the person or the person's employer communicates, orally or in writing, to the deferred deposit lender that the person's employer prohibits the person from receiving these communications;
 - (h) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and Venue; or
 - (i) avoid the requirements of Subsection 7-23-403(1)(c) by extending an interest-bearing loan within seven calendar days before the day on which the 10-week period ends.
- (5) Notwithstanding Subsections (4)(a) and (f), a deferred deposit lender that is the holder of a check used to obtain a deferred deposit loan that is dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:
- (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a condition of the holder not filing a civil action; or
 - (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).
- (6)
- (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a deferred deposit loan transaction with a person and does not apply to any rollover or extended payment plan of a deferred deposit loan.
 - (b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction:
 - (i) obtains one of the following regarding the person seeking the deferred deposit loan:

- (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a; or
- (B) written proof or verification of income from the person seeking the deferred deposit loan; or
- (ii) relies on the prior repayment history with the deferred deposit lender from the records of the deferred deposit lender.
- (c) If a person seeking a deferred deposit loan has not previously received a deferred deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, shall obtain a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a.
- (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred deposit lender obtains from the person seeking the deferred deposit loan a signed acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan has:
 - (a) reviewed the payment terms of the deferred deposit loan agreement;
 - (b) received a disclosure that a deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is first executed;
 - (c) received a disclosure explaining the extended payment plan options; and
 - (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers, or extended payment plans as allowed under this chapter.
- (8)
 - (a) Before initiating a civil action against a person who owes money on a deferred deposit loan, a deferred deposit lender shall provide the person at least 30 days notice of default, describing that:
 - (i) the person must remedy the default; and
 - (ii) the deferred deposit lender may initiate a civil action against the person if the person fails to cure the default within the 30-day period or through an extended payment plan meeting the requirements of Section 7-23-403 .
 - (b) A deferred deposit lender may provide the notice required under this Subsection (8):
 - (i) by sending written notice to the address provided by the person to the deferred deposit lender;
 - (ii) by sending an electronic transmission to a person if electronic contact information is provided to the deferred deposit lender; or
 - (iii) pursuant to the Utah Rules of Civil Procedure.
 - (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a), shall:
 - (i) be in English, if the initial transaction is conducted in English;
 - (ii) state the date by which the person must act to enter into an extended payment plan;
 - (iii) explain the procedures the person must follow to enter into an extended payment plan;
 - (iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the person to make an initial payment to enter into an extended payment plan:
 - (A) explain the requirement; and
 - (B) state the amount of the initial payment and the date the initial payment shall be made;
 - (v) state that the person has the opportunity to enter into an extended payment plan for a time period meeting the requirements of Subsection 7-23-403(2)(b); and
 - (vi) include the following amounts:
 - (A) the remaining balance on the original deferred deposit loan;

- (B) the total payments made on the deferred deposit loan;
- (C) any charges added to the deferred deposit loan amount allowed pursuant to this chapter;
and
- (D) the total amount due if the person enters into an extended payment plan.

Amended by Chapter 121, 2020 General Session

7-23-402 Electronic disbursement and collections.

If a deferred deposit lender collects payment on a deferred deposit loan through an electronic payment, the deferred deposit lender shall, on the day the loan is executed:

- (1) credit the amount of the deferred deposit loan through an electronic payment to the person receiving the deferred deposit loan; or
- (2) make the amount of the deferred deposit loan immediately available to the person receiving the deferred deposit loan.

Renumbered and Amended by Chapter 96, 2008 General Session

7-23-403 Extended payment plan.

- (1)
 - (a) If a person who owes money on a deferred deposit loan requests to enter into an extended payment plan, the deferred deposit lender who extended the deferred deposit loan shall allow the person to enter into an extended payment plan that meets the requirements of this section at least once during a 12-month period to pay the money owed.
 - (b) A deferred deposit lender is not required to enter into an extended payment plan with a person who owes money on a deferred deposit loan more than one time during a 12-month period.
 - (c) Notwithstanding the other provisions of this Subsection (1), if a person is charged 10 continuous weeks of interest or fees on a deferred deposit loan, including rollovers, at the end of the 10-week period:
 - (i) the person may request to repay the deferred deposit loan and rollovers under an extended payment plan that meets the requirements of this section; and
 - (ii) the deferred deposit lender shall execute the extended payment plan in accordance with this section.
- (2) An extended payment plan shall include the following:
 - (a) A deferred deposit lender shall require a person who receives a deferred deposit loan and wants to enter an extended payment plan to enter into a written agreement:
 - (i) with the deferred deposit lender;
 - (ii) that is executed:
 - (A) no sooner than the day before the last day of the initial term of the deferred deposit loan;
 - (B) except as provided in Subsection (2)(a)(ii)(C), no later than the business day before the day on which the deferred deposit loan is due; and
 - (C) for an extended payment plan offered after a default on a deferred deposit loan, 10 days after receiving the notice described in Subsection 7-23-401(8), unless a later date is allowed by the deferred deposit lender;
 - (iii) that is signed by the deferred deposit lender or its agent and the person;
 - (iv) a copy of which is given to the person; and
 - (v) that states:
 - (A) a payment schedule; and

- (B) the money owed under the extended payment plan.
 - (b) A payment schedule for an extended payment plan shall provide that the money owed may be paid:
 - (i) in at least four equal payments; and
 - (ii) over a time period that is at least the greater of:
 - (A) 90 days after the date of default; or
 - (B) 60 days after entering into an extended payment plan.
 - (c) The money owed under an extended payment plan shall equal the money owed under the deferred deposit loan, including interest and fees, that would be due if the deferred deposit loan is paid in full on the last day of the most current term of the deferred deposit loan.
- (3)
- (a) A deferred deposit lender may not charge interest or fees as part of an extended payment plan regardless of the name given to the interest or fees including:
 - (i) an origination fee;
 - (ii) a set-up fee;
 - (iii) a collection fee;
 - (iv) a transaction fee;
 - (v) a negotiation fee;
 - (vi) a handling fee;
 - (vii) a processing fee;
 - (viii) a late fee; or
 - (ix) a default fee.
 - (b) Except as provided in Subsection (7), a deferred deposit lender may not accept any additional security or collateral from the person who receives the deferred deposit loan to enter into the extended payment plan.
 - (c) A deferred deposit lender may not sell to the person who receives the deferred deposit loan any insurance or require the person to purchase insurance or any other goods or services to enter into the extended payment plan.
 - (d) A deferred deposit loan may not be considered in default during the extended payment plan period if the person who receives the deferred deposit loan complies with the terms of the extended payment plan.
 - (e) If a person who receives a deferred deposit loan defaults during the extended payment plan period, the deferred deposit lender may:
 - (i) accelerate the requirement to pay the money owed under the extended payment plan;
 - (ii) charge a fee not to exceed \$20;
 - (iii) terminate the extended payment plan; and
 - (iv) subject to the other requirements of this chapter, reinstate the original deferred deposit loan terms.
- (4) A deferred deposit loan may not penalize a person who enters into an extended payment plan for paying to the deferred deposit lender money owed under the extended payment plan before the money is due.
- (5)
- (a) A deferred deposit lender may not initiate collection activities for a deferred deposit loan that is subject to an extended payment plan during the period that the person owing money under the extended payment plan is in compliance with the extended payment plan.
 - (b) A deferred deposit lender may not attempt to collect an amount that is greater than the amount owed under the terms of an extended payment plan.

- (6) A deferred deposit lender may not collect additional interest or fees on a deferred deposit loan, except for the fee imposed under Subsection (3)(e)(ii), from a person who has been charged 10 weeks interest and defaults under the extended payment plan described in Subsection (1)(c).
- (7) Under an extended payment plan:
- (a) a deferred deposit lender may require the person who receives a deferred deposit loan to make an initial payment of not more than 20% of the total amount due under the terms of the extended payment plan if the person has defaulted on the deferred deposit loan;
 - (b)
 - (i) a deferred deposit lender may require a person who receives a deferred deposit loan to provide the deferred deposit lender, as security, one or more checks or written authorizations for an electronic transfer of money that equal the total amount due under the terms of the extended payment plan;
 - (ii) if the person who receives a deferred deposit loan makes a payment in the amount of a check or written authorization taken as security for that payment, the deferred deposit lender shall:
 - (A) return to the person the check or written authorization stamped "void"; or
 - (B) destroy the check or written authorization; and
 - (iii) the deferred deposit lender may not charge a fee to the person who receives the deferred deposit loan for a check that is provided as security during the extended payment plan and that is not paid upon presentment if the deferred deposit lender has previously charged a fee under Subsection 7-23-401(5) at least once in connection with that deferred deposit loan.
- (8) When a person who receives a deferred deposit loan makes a payment pursuant to an extended payment plan, the deferred deposit lender shall give to the person a receipt with the following information:
- (a) the name and address of the deferred deposit lender;
 - (b) the identification number assigned to the deferred deposit loan agreement or other information that identifies the deferred deposit loan;
 - (c) the date of the payment;
 - (d) the amount paid;
 - (e) the balance due on the deferred deposit loan or, when the person makes the final payment, a statement that the deferred deposit loan is paid in full; and
 - (f) if more than one deferred deposit loan made by the deferred deposit lender to the person is outstanding at the time the payment is made, a statement indicating to which deferred deposit loan the payment is applied.

Amended by Chapter 248, 2016 General Session

Part 5 Enforcement

7-23-501 Enforcement by department -- Rulemaking.

- (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the department may:
- (a) receive and act on complaints;
 - (b) take action designed to obtain voluntary compliance with this chapter;

- (c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter; or
- (d) take action against a check casher or deferred deposit lender that fails to:
 - (i) respond to the department, in writing within 30 business days of the day on which the check casher or deferred deposit lender receives notice from the department of a complaint filed with the department; or
 - (ii) submit information as requested by the department.
- (2) The department may:
 - (a) counsel persons and groups on their rights and duties under this chapter;
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;
 - (ii) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and:
 - (A) a check casher; or
 - (B) a deferred deposit lender; and
 - (iii) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and
 - (c) employ hearing examiners, clerks, and other employees and agents as necessary to perform the department's duties under this chapter.

Renumbered and Amended by Chapter 96, 2008 General Session
Amended by Chapter 382, 2008 General Session

7-23-502 Examination of books, accounts, and records by the department.

- (1) At least annually the department shall, for each person registered under this chapter and engaging in the business of cashing checks or the business of deferred deposit lending:
 - (a) examine the books, accounts, and records; and
 - (b) make investigations to determine compliance with this chapter.
- (2) In accordance with Section 7-1-401, a person examined under Subsection (1) shall pay a fee for the examination conducted under Subsection (1).

Amended by Chapter 37, 2017 General Session

7-23-503 Reporting by commissioner.

- (1) Subject to Subsection (2), as part of the commissioner's annual report to the governor and Legislature under Section 7-1-211, the commissioner shall report to the governor and Legislature on the operations on an aggregate basis of deferred deposit lenders operating in the state.
- (2) In preparing the report required by Subsection (1), the commissioner:
 - (a) shall include in the report for the immediately preceding calendar year aggregate information from the one or more operations statements filed under Subsection 7-23-201(2)(e) by deferred deposit lenders for that calendar year;
 - (b) shall include in the report:
 - (i) the total number of written complaints concerning issues material to deferred deposit loan transactions received by the department in a calendar year from persons who have entered into a deferred deposit loan with a deferred deposit lender;
 - (ii) for deferred deposit lenders who are registered with the department:

- (A) the number of the complaints described in Subsection (2)(b)(i) that the department considers resolved; and
- (B) the number of the complaints described in Subsection (2)(b)(i) that the department considers unresolved; and
- (iii) for deferred deposit lenders who are not registered with the department:
 - (A) the number of the complaints described in Subsection (2)(b)(i) that the department considers resolved; and
 - (B) the number of the complaints described in Subsection (2)(b)(i) that the department considers unresolved;
- (c) may not include in the report information from an operations statement filed with the department that could identify a specific deferred deposit lender; and
- (d) may not include in the report information from an operations statement filed under Subsection 7-23-201(2)(f).

Amended by Chapter 121, 2020 General Session

7-23-504 Penalties.

- (1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-23-201 is:
 - (a) guilty of a class B misdemeanor, except for a violation of:
 - (i) Subsection 7-23-401(1)(f)(i), (ii), or (iii); or
 - (ii) rules made under Subsection 7-23-501(2)(b); and
 - (b) subject to revocation of a person's registration under this chapter.
- (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department determines that a person is engaging in the business of cashing checks or the business of deferred deposit lending in violation of this chapter, the department may:
 - (a) revoke that person's registration under this chapter;
 - (b) issue a cease and desist order from committing any further violations;
 - (c) prohibit the person from continuing to engage in the business of:
 - (i) cashing checks; or
 - (ii) deferred deposit lending;
 - (d) impose an administrative fine not to exceed \$1,000 per violation, except that:
 - (i) a fine imposed under Subsection 7-23-201(4) shall comply with Subsection 7-23-201(4); and
 - (ii) the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or
 - (e) take any combination of actions listed under this Subsection (2).

Renumbered and Amended by Chapter 96, 2008 General Session

Amended by Chapter 382, 2008 General Session

Chapter 24
Title Lending Registration Act

Part 1
General Provisions

7-24-101 Title.

This chapter is known as the "Title Lending Registration Act."

Enacted by Chapter 236, 2003 General Session

7-24-102 Definitions.

As used in this chapter:

- (1) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
- (2) "Rollover" means the extension or renewal of the term of a title loan.
- (3)
 - (a) "Title lender" means a person that extends a title loan.
 - (b) "Title lender" includes a person that:
 - (i) arranges a title loan on behalf of a title lender;
 - (ii) acts as an agent for a title lender; or
 - (iii) assists a title lender in the extension of a title loan.
- (4)
 - (a) "Title loan" means a loan secured by the title to a:
 - (i) motor vehicle, as defined in Section 41-6a-102;
 - (ii) mobile home, as defined in Section 41-6a-102; or
 - (iii) motorboat, as defined in Section 73-18-2.
 - (b) "Title loan" includes a title loan extended at the same premise on which any of the following are sold:
 - (i) a motor vehicle, as defined in Section 41-6a-102;
 - (ii) a mobile home, as defined in Section 41-6a-102; or
 - (iii) a motorboat, as defined in Section 73-18-2.
 - (c) "Title loan" does not include:
 - (i) a purchase money loan;
 - (ii) a loan made in connection with the sale of a:
 - (A) motor vehicle, as defined in Section 41-6a-102;
 - (B) mobile home, as defined in Section 41-6a-102; or
 - (C) motorboat, as defined in Section 73-18-2; or
 - (iii) a loan extended by an institution listed in Section 7-24-305.

Amended by Chapter 284, 2015 General Session

**Part 2
Requirements**

7-24-201 Registration -- Rulemaking.

- (1)
 - (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident unless the person:
 - (i) registers with the department in accordance with this chapter; and
 - (ii) maintains a valid registration.

- (b) It is unlawful for a person to operate a mobile facility in this state to extend a title loan.
- (2)
- (a) A registration and a renewal of a registration expires on December 31 of each year unless on or before that date the person renews the registration.
 - (b) To register under this section, a person shall:
 - (i) pay an original registration fee established under Subsection 7-1-401(8); and
 - (ii) submit a registration statement containing the information described in Subsection (2)(d).
 - (c) To renew a registration under this section, a person shall:
 - (i) pay the annual fee established under Subsection 7-1-401(5); and
 - (ii) submit a renewal statement containing the information described in Subsection (2)(d).
 - (d) A registration or renewal statement shall state:
 - (i) the name of the person;
 - (ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);
 - (iii) the address of the person's principal business office, which may be outside this state;
 - (iv) the addresses of all offices in this state at which the person extends title loans;
 - (v) if the person extends title loans in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;
 - (vi) the name and address in this state of a designated agent upon whom service of process may be made;
 - (vii) disclosure of any injunction, judgment, administrative order, or conviction of any crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person;
 - (viii) evidence satisfactory to the department that the person is registered with the nationwide database; and
 - (ix) any other information required by the rules of the department.
 - (e)
 - (i) The commissioner may impose an administrative fine determined under Subsection (2)(e)(ii) on a person if:
 - (A) the person is required to be registered under this chapter;
 - (B) the person fails to register or renew a registration in accordance with this chapter;
 - (C) the department notifies the person that the person is in violation of this chapter for failure to be registered; and
 - (D) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (2)(e)(i)(C).
 - (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this Subsection (2)(e) is:
 - (A) \$500 if the person:
 - (I) has no office in this state at which the person extends a title loan; or
 - (II) has one office in this state at which the person extends a title loan; or
 - (B) if the person has two or more offices in this state at which the person extends a title loan, \$500 for each office at which the person extends a title loan.
 - (iii) The commissioner may reduce or waive a fine imposed under this Subsection (2)(e) if the person shows good cause.
- (3) If the information in a registration or renewal statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:
- (a) that person is required to renew the registration; or
 - (b) the department specifically requests earlier notification.

- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section:
- (a) providing for the form, content, and filing of a registration and renewal statement; and
 - (b) providing for the transition of persons registering with the nationwide database.

Amended by Chapter 284, 2015 General Session

7-24-202 Operational requirements for title loans.

- (1) A title lender shall:
- (a) post in a conspicuous location on its premises that can be viewed by a person seeking a title loan:
 - (i) a complete schedule of any interest or fees charged for a title loan that states the interest and fees:
 - (A) as dollar amounts; and
 - (B) as annual percentage rates; and
 - (ii) a telephone number a person may call to make a complaint to the department regarding a title loan;
 - (b) enter into a written contract for the title loan containing:
 - (i) the name of the person receiving the title loan;
 - (ii) the transaction date;
 - (iii) the amount of the title loan;
 - (iv) a statement of the total amount of any interest or fees that may be charged for the title loan, expressed as:
 - (A) a dollar amount; and
 - (B) an annual percentage rate; and
 - (v)
 - (A) the name and address of the designated agent required to be provided the department under Subsection 7-24-201(2)(d)(vi); and
 - (B) a statement that service of process may be made to the designated agent;
 - (c) provide the person seeking the title loan a copy of the written contract described in Subsection (1)(b);
 - (d) prior to the execution of the title loan:
 - (i) orally review with the person seeking the title loan the terms of the title loan including:
 - (A) the amount of any interest rate or fee, expressed as:
 - (I) a dollar amount; and
 - (II) an annual percentage rate; and
 - (B) the date on which the full amount of the title loan is due; and
 - (ii) provide the person seeking the title loan a copy of the disclosure form adopted by the department under Section 7-24-203; and
 - (e) comply with the following as in effect on the date the title loan is extended:
 - (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;
 - (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;
 - (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and
 - (iv) Title 70C, Utah Consumer Credit Code.
- (2) If a title lender extends a title loan through the Internet or other electronic means, the title lender shall:
- (a) provide the information described in Subsection (1)(a) to the person receiving the title loan:

- (i) in a conspicuous manner; and
 - (ii) prior to the person entering into the title loan; and
 - (b) in connection with the disclosure required under Subsection (2)(a), provide a list of states where the title lender is registered or authorized to offer title loans through the Internet or other electronic means.
- (3) A title lender may not:
- (a) rollover a title loan unless the person receiving the title loan requests a rollover of the title loan;
 - (b) extend more than one title loan on any vehicle at one time;
 - (c) extend a title loan that exceeds the fair market value of the vehicle securing the title loan; or
 - (d) extend a title loan without regard to the ability of the person seeking the title loan to repay the title loan, including the person's:
 - (i) current and expected income;
 - (ii) current obligations; and
 - (iii) employment.
- (4) A title lender has met the requirements of Subsection (3)(d) if the person seeking a title loan provides the title lender with a signed acknowledgment that:
- (a) the person has provided the title lender with true and correct information concerning the person's income, obligations, and employment; and
 - (b) the person has the ability to repay the title loan.

Amended by Chapter 87, 2007 General Session

7-24-203 Disclosure form for title loans.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a disclosure form for title loans that complies with this section.
- (2) The department shall specify by rule:
- (a) the information to be provided in the disclosure form including:
 - (i) the costs of obtaining a title loan;
 - (ii) the consequences of defaulting on a title loan;
 - (iii) generally available alternatives to a title loan; and
 - (iv) methods of obtaining credit counseling or other financial advice;
 - (b) the type size of the disclosure form; and
 - (c) the manner in which a title lender shall conspicuously provide the disclosure form to a person seeking a title loan.

Amended by Chapter 382, 2008 General Session

7-24-204 Remedy for default.

Except in the event of fraud by a borrower, if a borrower defaults on a title loan:

- (1) the title lender's sole remedy is to seek repossession and sale of the property securing the title loan;
- (2) the title lender may not pursue the borrower personally for:
 - (a) repayment of the loan; or
 - (b) any deficiency after repossession and sale of the property securing the loan; and
- (3) after repossession and sale of the property securing the title loan, the title lender shall return to the borrower any proceeds from the sale in excess of the amount owed on the title loan.

Enacted by Chapter 236, 2003 General Session

Part 3 Enforcement

7-24-301 Enforcement by department -- Rulemaking.

- (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the department may:
 - (a) receive and act on complaints;
 - (b) take action designed to obtain voluntary compliance with this chapter; or
 - (c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter.
- (2) The department may:
 - (a) counsel persons and groups on their rights and duties under this chapter;
 - (b) make rules to:
 - (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;
 - (ii) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between title lenders and customers; or
 - (iii) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and
 - (c) employ hearing examiners, clerks, and other employees and agents as necessary to perform the department's duties under this chapter.

Amended by Chapter 382, 2008 General Session

7-24-302 Examination of books, accounts, and records by the department.

- (1) The department may examine the books, accounts, and records of a title lender and may make investigations to determine compliance with this chapter.
- (2) In accordance with Section 7-1-401, a title lender shall pay a fee for an examination conducted under Subsection (1).

Enacted by Chapter 236, 2003 General Session

7-24-303 Penalties.

- (1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-24-201 is:
 - (a) guilty of a class B misdemeanor except for a violation of:
 - (i) Subsection 7-24-202(1)(e)(i), (ii), or (iii); or
 - (ii) rules made under Subsection 7-24-301(2)(b); and
 - (b) subject to revocation of a person's registration under this chapter.
- (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department determines that a person is extending title loans in violation of this chapter, the department may:
 - (a) revoke that person's registration under this chapter;
 - (b) issue a cease and desist order from committing any further violations;
 - (c) prohibit the person from continuing to extend title loans;
 - (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

- (i) a fine imposed under Subsection 7-24-201(2)(e) shall comply with Subsection 7-24-201(2)(e); and
 - (ii) the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or
 - (e) take any combination of actions listed under this Subsection (2).
- (3) A person is not subject to the penalties under this section for a violation of this chapter that was not willful or intentional, including a violation resulting from a clerical error.

Amended by Chapter 382, 2008 General Session

7-24-304 Civil liability.

Nothing in this chapter is intended to limit any civil liability that may exist against a title lender for:

- (1) breach of contract;
- (2) violation of federal law; or
- (3) other unlawful act.

Enacted by Chapter 236, 2003 General Session

7-24-305 Exemptions.

The following are not subject to the requirements of this chapter:

- (1) a depository institution;
- (2) a depository institution holding company; or
- (3) an institution directly or indirectly owned or controlled by one or more:
 - (a) depository institutions; or
 - (b) depository institution holding companies.

Enacted by Chapter 236, 2003 General Session

Chapter 25
Money Transmitter Act

Part 1
General Provisions

7-25-101 Title.

This chapter is known as the "Money Transmitter Act."

Enacted by Chapter 284, 2015 General Session

7-25-102 Definitions.

As used in this chapter:

- (1) "Applicant" means a person filing an application for a license under this chapter.

- (2) "Authorized agent" means a person designated by the licensee under this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.
- (3) "Blockchain" means an electronic method of storing data that is:
 - (a) maintained by consensus of multiple unaffiliated parties;
 - (b) distributed across multiple locations; and
 - (c) mathematically verified.
- (4) "Blockchain token" means an electronic record that is:
 - (a) recorded on a blockchain; and
 - (b) capable of being traded between persons without an intermediary.
- (5) "Executive officer" means the licensee's president, chair of the executive committee, executive vice president, treasurer, chief financial officer, or any other person who performs similar functions.
- (6) "Key shareholder" means a person, or group of persons acting in concert, who is the owner of 20% or more of a class of an applicant's stock.
- (7) "Licensee" means a person licensed under this chapter.
- (8) "Material litigation" means litigation that, according to generally accepted accounting principles, is considered significant to a person's financial health and would be required to be referenced in an annual audited financial statement, report to shareholders, or similar document.
- (9)
 - (a) "Money transmission" means the sale or issuance of a payment instrument or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.
 - (b) "Money transmission" does not include a blockchain token.
- (10) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
- (11) "Outstanding payment instrument" means a payment instrument issued by the licensee that has been sold in the United States directly by the licensee or a payment instrument issued by the licensee that has been sold and reported to the licensee as having been sold by an authorized agent of the licensee in the United States, and that has not yet been paid by or for the licensee.
- (12)
 - (a) "Payment instrument" means a check, draft, money order, travelers check, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable.
 - (b) "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.
- (13) "Remit" means either to make direct payment of the money to the licensee or its representatives authorized to receive the money, or to deposit the money in a depository institution in an account in the name of the licensee.

Amended by Chapter 354, 2020 General Session

7-25-103 Rules.

The commissioner may make a rule authorized by this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including to:

- (1) restrict or prohibit practices that are misleading, unfair, or abusive;

- (2) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and a money transmitter; and
- (3) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations.

Enacted by Chapter 284, 2015 General Session

Part 2 Licensing

7-25-201 Licensing required.

- (1) Unless exempt under Section 7-25-202, a person may not engage in the business of money transmission without a license.
- (2) A licensee may conduct its business in this state at one or more locations, directly or indirectly owned, or through one or more authorized agents, or both, pursuant to the single license granted to the licensee.

Enacted by Chapter 284, 2015 General Session

7-25-202 Exemptions.

This chapter does not apply to:

- (1) the United States or a department or agency of the United States;
- (2) the state or a political subdivision of the state; or
- (3) a depository institution or a trust company organized under the laws of a state or the United States.

Enacted by Chapter 284, 2015 General Session

7-25-203 License qualifications.

- (1) An applicant for a license shall:
 - (a) demonstrate, and a licensee shall maintain, a net worth of not less than \$1,000,000 as demonstrated by a financial statement for the most recent fiscal year that is prepared and certified by an independent auditor and is satisfactory to the commissioner; and
 - (b) demonstrate experience, character, and general fitness to command the confidence of the public and warrant the belief that the business to be operated will be operated lawfully and fairly.
- (2) A corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. A noncorporate applicant shall, at the time of the filing of an application for a license under this chapter and at all times after a license is issued, be qualified to do business in the state.
- (3) Subject to the commissioner's discretion, a person may not be licensed under this chapter to do business in the state:
 - (a) if the person has been convicted of, or pled guilty or no contest to, a felony:
 - (i) during the seven years preceding the day on which the individual files an application; or
 - (ii) at any time, if the felony involves an act of:
 - (A) fraud;

- (B) dishonesty;
- (C) breach of trust; or
- (D) money laundering; or
- (b) if an executive officer, key shareholder, or director of the person has been convicted of, or pled guilty or no contest to, a felony:
 - (i) during the seven years preceding the day on which the individual files an application; or
 - (ii) at any time, if the felony involves an act of:
 - (A) fraud;
 - (B) dishonesty;
 - (C) breach of trust; or
 - (D) money laundering.
- (4) The applicant shall submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.
- (5) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons being licensed under this chapter.

Enacted by Chapter 284, 2015 General Session

7-25-204 License application -- Bond.

- (1) To apply for a license under this chapter, a person shall:
 - (a) submit an application in writing;
 - (b) pay the original license fee required by Section 7-1-401; and
 - (c) submit a surety bond in accordance with Subsection (3).
- (2) An application shall contain:
 - (a) the exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;
 - (b) the history of the applicant's material litigation and criminal convictions for the seven-year period before the date the application is submitted;
 - (c) a description of the activities conducted by the applicant and a history of operations;
 - (d) a description of the business activities in which the applicant seeks to be engaged in the state;
 - (e) a list identifying the applicant's authorized agents in the state, if any, at the time of the filing of the license application;
 - (f) a sample authorized agent contract, if applicable;
 - (g) a sample form of payment instrument, if applicable;
 - (h) the one or more locations at which the applicant and its authorized agents, if any, propose to conduct the licensed activities in the state; and
 - (i) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) An applicant shall submit with an application filed under this chapter a surety bond satisfactory to the commissioner in the minimum sum of \$50,000 to reimburse the state for expenses of any kind or nature that the department may incur in connection with an administrative or judicial proceeding against a licensee, former licensee, or seller relating to the issuance or sale of a payment instrument in the state.

- (b) A licensee shall maintain a surety bond meeting the requirements of Subsection (3)(a) for three years after the licensee ceases money transmission operations in the state. Except that the commissioner may permit the surety bond to be reduced or eliminated before the end of the three-year period to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.
- (c) A surety bond shall remain in effect until cancellation, which may occur only after 30 days' written notice to the commissioner. Cancellation may not affect liability incurred or accrued during that period.

Enacted by Chapter 284, 2015 General Session

7-25-205 Issuance of license.

- (1) Upon the filing of a complete application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which is to be borne by the applicant in accordance with Subsection 7-1-401(6).
- (2) The commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state if the commissioner finds that:
 - (a) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
 - (b) the applicant has fulfilled the requirements imposed by this chapter; and
 - (c) the applicant has paid the required original license fee under Section 7-1-401.

Amended by Chapter 136, 2019 General Session

7-25-206 Renewal of license.

- (1) A license issued or renewed pursuant to this chapter expires on December 31. A licensee may renew the license through the nationwide database for the ensuing 12-month period upon application by the license holder showing continued compliance with the requirements of Sections 7-25-201, 7-25-203, and 7-25-204, and the payment of the license renewal fee required by Section 7-1-401 to the commissioner.
- (2) The licensee shall include in its renewal application:
 - (a) a copy of the licensee's most recent audited unconsolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, except that a licensee may provide the most recent audited consolidated annual financial statement of the parent corporation if the statement separately includes the balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes of financial position of the licensee;
 - (b) material changes to the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
 - (c) a list of the locations within this state at which business regulated by this chapter is conducted by either the licensee or its authorized agent;
 - (d) notification of material litigation or litigation relating to money transmission; and
 - (e) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (3) Failure to pay the renewal fee or to submit a completed renewal application between November 1 and December 31 shall cause the license to expire at the close of business on December 31.

Enacted by Chapter 284, 2015 General Session

Part 3 Operational Requirements

7-25-301 Reporting requirements.

- (1) Within 15 days of the occurrence of an event listed in this Subsection (1), a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in the state:
- (a) the filing for bankruptcy or reorganization by the licensee;
 - (b) the institution of revocation or suspension proceedings against the licensee by a state or governmental authority with regard to the licensee's money transmission activities;
 - (c) a felony indictment of the licensee or any of its officers, directors, or principals related to money transmission activities;
 - (d) a felony conviction of the licensee or any of its officers, directors, or principals related to money transmission activities; and
 - (e) any other event that the commissioner may determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) An authorized agent shall report to the licensee the theft or loss of payment instruments valued at \$5,000 or more within 24 hours from the time the authorized agent knew or should have known of the theft or loss. Upon the receipt of the report, the licensee shall immediately provide the information to the commissioner.

Enacted by Chapter 284, 2015 General Session

7-25-302 Changes in control of a licensee.

- (1) A change in control of a licensee shall require prior notice to the commissioner. In the case of a publicly traded corporation, notification shall be made in writing within 15 days of a change or acquisition of control of a licensee. Upon notification, the commissioner may require information considered necessary to determine whether an application for a license is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose a risk to the interests of the public.
- (2) Whenever control of a licensee is acquired or exercised in violation of this section, the license of the licensee shall be considered revoked as of the date of the unlawful acquisition of control. The licensee, or its controlling person, shall surrender the license to the commissioner on demand.

Enacted by Chapter 284, 2015 General Session

7-25-303 Authorized agent contracts.

A licensee desiring to conduct licensed activities through authorized agents shall authorize each authorized agent to operate pursuant to an express written contract, which shall, at a minimum, provide the following:

- (1) that the licensee appoints the person as its agent with authority to sell payment instruments or transmit money on behalf of the licensee in compliance with state and federal law;
- (2) that neither a licensee nor an authorized agent may authorize a subagent without the written consent of the commissioner;
- (3) that licensees are subject to supervision and regulation by the commissioner;
- (4) an acknowledgment that the authorized agent consents to the commissioner's inspection, with or without prior notice to the licensee or authorized agent, of the records of the authorized agent or agents of the licensee; and
- (5) that an authorized agent is under a duty to act only as authorized under the contract with the licensee and that an authorized agent who exceeds its authority is subject to cancellation of its contract by the licensee and disciplinary action by the commissioner.

Enacted by Chapter 284, 2015 General Session

7-25-304 Authorized agent conduct.

- (1) An authorized agent may not make a fraudulent or false statement or misrepresentation to a licensee or to the commissioner.
- (2) A money transmission, sale, or issuance of payment instrument activity conducted by an authorized agent shall be strictly in accordance with the licensee's written procedures provided to the authorized agent.
- (3) An authorized agent shall remit the money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized agent. The failure of an authorized agent to remit money owing to a licensee within the contractual time period shall result in liability of the authorized agent to the licensee for three times the licensee's actual damages. The commissioner shall have the discretion to set, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the maximum remittance time.
- (4) The money, less fees, received by an authorized agent of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized agent for transmission shall, from the time the money is received by the authorized agent until the time when the money or an equivalent amount is remitted by the authorized agent to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized agent commingles the money with any other money or property owned or controlled by the authorized agent, the commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Enacted by Chapter 284, 2015 General Session

7-25-305 Instrument to bear name of licensee.

A payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

Enacted by Chapter 284, 2015 General Session

**Part 4
Enforcement**

7-25-401 Examinations.

- (1)
 - (a) The commissioner may conduct periodic on-site examinations of a licensee. The commissioner may examine a licensee's authorized or apparent agents. At the commissioner's discretion, written notice of the examination may be provided to the licensee or an authorized or apparent agent.
 - (b) In conducting an examination, the commissioner or the commissioner's staff:
 - (i) shall have full and free access to all the records of the licensee and its authorized or apparent agents; and
 - (ii) may summon and qualify as witnesses, under oath, and examine the directors, officers, members, agents, and employees of a licensee or authorized or apparent agent, and any other person concerning the condition and affairs of the licensee.
 - (c) In accordance with Section 7-1-401, the licensee shall pay the reasonable costs of an examination under this section.
 - (d) An on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states.
 - (e) The commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and a report so accepted is considered for all purposes as an official report of the commissioner.
- (2) Upon reasonable cause, the commissioner may conduct an on-site examination of an unlicensed person to determine whether violations of this chapter have occurred or are occurring. In conducting the examination, the commissioner has the applicable powers provided pursuant to Section 7-25-204.

Enacted by Chapter 284, 2015 General Session

7-25-402 Confidentiality of information.

- (1) Information obtained by the commissioner under this chapter is confidential in accordance with Section 7-1-802.
- (2) Subsection (1) does not prohibit the commissioner from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on the licensees.

Enacted by Chapter 284, 2015 General Session

7-25-403 Termination or suspension of authorized agent activity.

- (1)
 - (a) The commissioner may issue an order suspending or barring an authorized agent from continuing to be or becoming an authorized agent of a licensee during the period for which the order is in effect, if subject to Title 63G, Chapter 4, Administrative Procedures Act, the commissioner finds that an authorized agent of a licensee or a director, officer, employee, or controlling person of the authorized agent has:
 - (i) violated this chapter or a rule or order issued under this chapter;
 - (ii) engaged or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or
 - (iii) made or caused to be made in an application or report filed with the commissioner or a proceeding before the commissioner, a statement that was at the time and in the circumstances under which it was made, false or misleading with respect to a material fact,

or has omitted to state in the application or report a material fact that is required to be stated in the application or report.

- (b) Upon issuance of the order, the licensee shall terminate its relationship with the authorized agent according to the terms of the order.
- (2) An authorized agent to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner may not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when the person is permitted to resume being an authorized agent of a licensee, comply with all applicable provisions of this chapter and a rule or order issued under this title.

Enacted by Chapter 284, 2015 General Session

7-25-404 Licensee liability.

A licensee's responsibility to a person who purchases a payment instrument or money transmission transaction from a licensee or a licensee's authorized agent is limited to the face amount of the payment instrument or money transmission transaction purchased.

Enacted by Chapter 284, 2015 General Session

7-25-405 Criminal and civil penalties.

- (1) A person who violates this chapter or who files materially false information with a license application or renewal under this chapter is:
 - (a) guilty of a class B misdemeanor; and
 - (b) subject to revocation of the person's license under this chapter.
- (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the commissioner determines that a person is engaging in the business of money transmission in violation of this chapter, the commissioner may:
 - (a) suspend, revoke, or not renew that person's license under this chapter;
 - (b) issue a cease and desist order from committing any further violation;
 - (c) prohibit the person from continuing to engage in the business of money transmission;
 - (d) impose an administrative fine not to exceed \$1,000 per violation, except that the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or
 - (e) take any combination of actions listed under this Subsection (2).
- (3) If the commissioner revokes a license, the department is not required to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee is paid.

Enacted by Chapter 284, 2015 General Session

7-25-406 Consent orders -- Emergency order.

- (1) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule or order made or issued under this chapter, has been violated, nor need it constitute a finding by the commissioner that the person has violated any provision of this chapter or any rule or order made or issued under this chapter.

- (2) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.
- (3) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken, which is filed with the commissioner within 20 days of the receipt of the notice of the commissioner's emergency action.

Enacted by Chapter 284, 2015 General Session

7-25-407 Required deposits.

If the commissioner finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution acceptable to the commissioner in such amounts, for such period, and upon such conditions as the commissioner may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

Enacted by Chapter 284, 2015 General Session

Chapter 26
Financial Exploitation Prevention Act

Part 1
General Provisions

7-26-101 Title.

This chapter is known as the "Financial Exploitation Prevention Act."

Enacted by Chapter 228, 2020 General Session

7-26-102 Definitions.

As used in this chapter:

- (1) "Adult Protective Services" means the same as that term is defined in Section 62A-3-301.
- (2) "Covered financial institution" means any of the following that operate in the state:
 - (a) a state or federally chartered:
 - (i) bank;
 - (ii) savings and loan association;
 - (iii) savings bank;
 - (iv) industrial bank;
 - (v) credit union;
 - (vi) trust company; or
 - (vii) depository institution; or
 - (b) a financial institution.

- (3) "Financial exploitation" means:
 - (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or other property of an individual; or
 - (b) an act or omission, including through a power of attorney, guardianship, or conservatorship of an individual, to:
 - (i) obtain control, through deception, intimidation, or undue influence, over the individual's money, assets, or other property to deprive the individual of the ownership, use, benefit, or possession of the individual's money, assets, or other property; or
 - (ii) convert the individual's money, assets, or other property to deprive the individual of the ownership, use, benefit, or possession of the individual's money, assets, or other property.
- (4) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.
- (5) "Qualified individual" means:
 - (a) a branch manager of a covered financial institution; or
 - (b) a director, officer, employee, agent, or other representative that a covered financial institution designates.
- (6) "Third party associated with a vulnerable adult" means an individual:
 - (a) who is a parent, spouse, adult child, sibling, or other known family member of a vulnerable adult;
 - (b) whom a vulnerable adult authorizes the financial institution to contact;
 - (c) who is a co-owner, additional authorized signatory, or beneficiary on a vulnerable adult's account; or
 - (d) who is an attorney, trustee, conservator, guardian or other fiduciary whom a court or a government agency selects to manage some or all of the financial affairs of the vulnerable adult.
- (7) "Transaction" means any of the following services that a covered financial institution provides:
 - (a) a transfer or request to transfer or disburse funds or assets in an account;
 - (b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a money order, cashier's check, or official check;
 - (c) a request to negotiate a check or other negotiable instrument;
 - (d) a request to change the ownership of, or access to, an account;
 - (e) a request to sell or transfer a security or other asset, or a request to affix a medallion stamp or provide any form of guarantee or endorsement in connection with an attempt to sell or transfer a security or other asset, if the person selling or transferring the security or asset is not required to obtain a license under Section 61-1-3;
 - (f) a request for a loan, extension of credit, or draw on a line of credit;
 - (g) a request to encumber any movable or immovable property; or
 - (h) a request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right.
- (8) "Vulnerable adult" means:
 - (a) an individual who is 65 years of age or older; or
 - (b) the same as that term is defined in Section 62A-3-301.

Enacted by Chapter 228, 2020 General Session

Part 2
General Prevention of Financial Exploitation

7-26-201 Permitted delay of wire transfers.

- (1) This section applies to a wire transfer that transfers money from a consumer account at a covered financial institution.
- (2) If a qualified individual reasonably believes that executing a requested wire transfer will result in financial exploitation, the covered financial institution may:
 - (a) delay the wire transfer; and
 - (b) contact:
 - (i) a law enforcement agency;
 - (ii) Adult Protective Services; or
 - (iii) a joint co-owner on the account.
- (3) The delay of a wire transfer described in Subsection (2) expires when the earlier of the following occurs:
 - (a) the covered financial institution reasonably determines that the wire transfer is not financial exploitation; or
 - (b) 15 business days pass after the day on which the covered financial institution first initiated the delay of the wire transfer.

Enacted by Chapter 228, 2020 General Session

7-26-202 Office of the Attorney General website.

The Office of the Attorney General shall post on the Office of the Attorney General's website up-to-date information regarding financial scams, including:

- (1) the most prominent and common characteristics of financial scams;
- (2) current or trending financial scams;
- (3) resources for a vulnerable adult who suspects a financial scam; and
- (4) resources for an individual who suspects the financial exploitation of a vulnerable adult.

Enacted by Chapter 228, 2020 General Session

Part 3

Permitted Acts to Prevent Financial Exploitation of Vulnerable Adults

7-26-301 Delay of a transaction involving a vulnerable adult.

- (1) A covered financial institution may delay a transaction involving a vulnerable adult, if:
 - (a) a qualified individual reasonably believes that executing the requested transaction will result in financial exploitation of the vulnerable adult; or
 - (b) a law enforcement agency provides the covered financial institution information demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.
- (2)
 - (a) A covered financial institution that delays a transaction in accordance with Subsection (1):
 - (i) except as provided in Subsection (2)(b), shall no later than two business days after the day on which the transaction is delayed, send notice of the delay and the reason for the delay to each party:
 - (A) authorized to transact business on the account; and

- (B) for which the covered financial institution has contact information;
- (ii) may send notice of the delay, the reason for the delay, or any additional information about the transaction to:
 - (A) a law enforcement agency; or
 - (B) Adult Protective Services.
- (b) A covered financial institution may:
 - (i) decide not to provide notice to a party described in Subsection (2)(a)(i) if a qualified individual reasonably believes the party has engaged in attempted financial exploitation of the vulnerable adult; or
 - (ii) send a notice described in Subsection (2)(a) electronically.
- (3)
 - (a) Except as provided in Subsection (3)(b), the delay of a transaction described in Subsection (1) expires when the earlier of the following occurs:
 - (i) the covered financial institution reasonably determines that the transaction will not result in financial exploitation of a vulnerable adult; or
 - (ii) 15 business days pass after the day on which the covered financial institution first initiated the delay of the transaction.
 - (b)
 - (i) If a covered financial institution receives a request from a law enforcement agency to extend the delay of a transaction beyond the expiration date established in Subsection (3)(a), the covered financial institution may extend the delay no more than 25 business days after the day on which the covered financial institution first initiated the delay.
 - (ii) A court of competent jurisdiction may enter an order:
 - (A) extending or shortening the delay of a transaction; or
 - (B) providing relief based on the petition of the covered financial institution, law enforcement agency, or an interested party.

Enacted by Chapter 228, 2020 General Session

7-26-302 Permitted notifications.

- (1) A covered financial institution may notify a law enforcement agency or Adult Protective Services if a qualified individual believes that the financial exploitation of a vulnerable adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.
- (2) A covered financial institution may notify a third party associated with a vulnerable adult if a qualified individual believes that the financial exploitation of the vulnerable adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.
- (3) A covered financial institution may choose not to notify a third party associated with a vulnerable adult as described in Subsection (2), if a qualified individual reasonably believes that the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable adult.

Enacted by Chapter 228, 2020 General Session

**Part 4
Immunity**

7-26-401 Immunity.

- (1) A covered financial institution or a director, officer, employee, attorney, accountant, agent, or other representative of the covered financial institution:
 - (a) has no duty to act under this chapter to protect a vulnerable adult from financial exploitation by a third person; and
 - (b) is immune from all criminal, civil, and administrative liability for not taking a permissive action under this chapter.
- (2) A covered financial institution or a director, officer, employee, attorney, accountant, agent, or other representative of the covered financial institution who chooses to act as described in:
 - (a) Subsection 7-26-201(2), is immune from all criminal, civil, and administrative liability for the act, unless the act is done in bad faith; and
 - (b) Section 7-26-301 or 7-26-302, is immune from all criminal, civil, and administrative liability for the act, unless the act:
 - (i) is done in bad faith; and
 - (ii) causes pecuniary loss to a vulnerable adult suspected of being a victim of financial exploitation.
- (3) The immunity described in this section does not extend to an individual that is a principal, a conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of a vulnerable adult.

Enacted by Chapter 228, 2020 General Session