

## 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Repealed and Re-enacted by Chapter 49, 1995 General Session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) Subject to Section 7-1-103.5, "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; or
  - (b) vote 25% or more of any class of voting securities of a financial institution.
- (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 449, 2022 General Session

**7-1-103.5 Control.**

- (1) There is a rebuttable presumption that a person has control of a financial institution if the person has the power, directly or indirectly, or through or in concert with one or more persons, to vote more than 10% but less than 25% of any class of voting securities of a financial institution.
- (2) Except as provided in rule made under Subsection (3), a person seeking to rebut a presumption of control described in Subsection (1) shall submit an application to the commissioner.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules that specify:
  - (a) the procedures and requirements for an application described in Subsection (2); and
  - (b) the conditions under which a person may obtain a determination that the person is not in control of a financial institution without filing an application in accordance with Subsection (2).

- (4) The commissioner has sole discretion to determine whether a person rebuts a presumption of control under this section.

Enacted by Chapter 449, 2022 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

***Effective 7/1/2024***

**7-1-106 Venue for action or petition brought by commissioner.**

If the commissioner brings an action in the district court under this title, the commissioner shall bring the action:

- (1) in accordance with Title 78B, Chapter 3a, Venue for Civil Actions; or
- (2) in the county where the office of the commissioner is located.

Enacted by Chapter 401, 2023 General Session

