

## 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 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405:
  - (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 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 except:
    - (i) the following do not apply to an institution that is described in Subsection (3)(a):
      - (A) Subsection 48-2c-402(2)(a)(ii);
      - (B) Section 48-2c-604;
      - (C) Section 48-2c-703;
      - (D) Section 48-2c-708;
      - (E) Subsection 48-2c-801(2);
      - (F) Section 48-2c-1102;
      - (G) Section 48-2c-1104; and
      - (H) Subsections 48-2c-1201(2) through (5);
    - (ii) 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
- (iii) 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 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
  - (b) "articles of incorporation" includes a limited liability company's certificate of organization as that term is used in Section 48-2c-403 or Section 48-3a-201, as appropriate pursuant to Section 48-3a-1405;
  - (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 48-2c-102 or Section 48-3a-201, as appropriate pursuant to Section 48-3a-1405;
  - (e) "corporation" includes a limited liability company organized under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
  - (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 2c, Part 10, Distributions, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405;
  - (h) "incorporator" includes an organizer of a limited liability company as provided in Title 48, Chapter 2c, Part 4, Formation, or Title 48, Chapter 3a, Part 2, Formation -- Certificate of Organization and Other Filings, as appropriate pursuant to Section 48-3a-1405;
  - (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 2c, Part 7, Members, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405; and
  - (ii) a certificate or other evidence of an ownership interest in a limited liability company; and
- (k) "stockholder" or "shareholder" includes an owner of an interest in an institution described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7, Members, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405.
- (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 Section 48-2c-606, or Title 48, Chapter 3a, Part 12, Series Limited Liability Companies, as appropriate pursuant to Section 48-3a-1405.

Amended by Chapter 73, 2013 General Session  
Amended by Chapter 73, 2013 General Session  
Amended by Chapter 412, 2013 General Session