

CREDIT UNION ACT - MEMBER BUSINESS

LOANS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Credit Union Act to modify restrictions on member business loans. The act modifies definitions. This act amends limitations on member business loans.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-9-3, as last amended by Chapter 329, Laws of Utah 1999

7-9-20, as last amended by Chapter 329, Laws of Utah 1999

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

Section 1. Section **7-9-3** is amended to read:

7-9-3. Definitions.

As used in this chapter:

(1) "Associated member" means a member of a credit union that shares with a borrower, an ownership, investment, or other pecuniary interest in a business or commercial endeavor.

~~(1)~~ (2) "Association" means a group of persons that:

(a) has a similar:

(i) interest;

(ii) profession;

(iii) occupation; or

(iv) formal association with an identifiable purpose; or

(b) is employed by a common employer.

~~(2)~~ (3) "Capital and surplus" means:

(a) shares;

(b) deposits;



28 (c) reserves; and

29 (d) undivided earnings.

30 [~~(3)~~] (4) "Corporate credit union" means any credit union organized pursuant to any state
31 or federal act for the purpose of serving other credit unions.

32 [~~(4)~~] (5) "Deposits" means that portion of the capital paid into the credit union by members
33 on which a specified rate of interest will be paid.

34 [~~(5)~~] (6) "Immediate family" means parents, spouse, surviving spouse, children, and
35 siblings of the member.

36 [~~(6)~~] (7) "Limited field of membership" means persons designated as eligible for credit
37 union membership in accordance with Section 7-9-51 or 7-9-53.

38 [~~(7)~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit, the
39 proceeds of which will be used for:

40 (i) a commercial purpose;

41 (ii) other business investment property or venture purpose; or

42 (iii) an agricultural purpose.

43 (b) "Member-business loan" does not include an extension of credit:

44 (i) that is fully secured by a lien on a one- to four- family dwelling [~~that is the primary~~
45 ~~residence of a member~~];

46 (ii) that is fully secured by:

47 (A) shares or deposits in the credit union making the extension of credit; or

48 (B) deposits in other financial institutions;

49 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an
50 advance commitment to purchase in full by, an agency of:

51 (A) the federal government;

52 (B) a state; or

53 (C) a political subdivision of a state; [~~or~~]

54 (iv) (A) that is extended to:

55 (I) a member; or

56 (II) an associated member; and

57 (B) that when added to the aggregate of all of the extensions of credit to the member or
58 associated member is equal to or less than \$50,000;

59 [~~(iv)~~] (v) that is granted by a corporate credit union to another credit union.

60 [~~(8)~~] (9) "Service center" means a single location at which multiple credit unions can
61 provide products or services directly to their members.

62 [~~(9)~~] (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from
63 which owners are permitted to make withdrawals by negotiable or transferable instruments or other
64 orders for the purpose of making transfers to other persons or to the owner.

65 [~~(10)~~] (11) "Shares" means that portion of the capital paid into the credit union by
66 members on which dividends may be paid.

67 Section 2. Section **7-9-20** is amended to read:

68 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

69 (1) At annual meetings the members shall elect from their number a board of directors
70 consisting of an odd number of not less than five members.

71 (2) The bylaws may provide balloting by:

72 (a) mail;

73 (b) ballot box; or

74 (c) both mail and ballot box.

75 (3) Voting may not be by proxy.

76 (4) Members of the board of directors shall hold office for the terms prescribed in the
77 bylaws.

78 (5) The board of directors shall meet at least monthly.

79 (6) The board of directors shall have the general management of the affairs, funds, and
80 records of the credit union. In particular, the board of directors shall:

81 (a) act upon applications for membership;

82 (b) act upon expulsion of members;

83 (c) fix the amount of surety bond required of each officer or employee having custody of
84 funds;

85 (d) determine the rate of interest or dividend allowed on shares and deposits;

86 (e) determine the terms and conditions of credit granted to members;

87 (f) lend money, borrow money, and pledge security for any borrowing;

88 (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in
89 the supervisory committee until the election and qualification of officers to fill those vacancies;

90 (h) appoint up to two alternate directors as provided in the bylaws;

91 (i) fix the amount of the entrance fee;

92 (j) declare dividends and their amount;

93 (k) make recommendations to meetings of the members relative to amendments to the
94 articles of incorporation, and transact any other business of the credit union; and

95 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
96 any one member, up to the limitations described in Subsection (7).

97 (7) (a) The credit that may be outstanding or available by a credit union at any one time is
98 subject to the limitations described in Subsections (7)(b) and (c)[:].

99 [~~(i) except as provided in Subsection (7)(d) through (7)(f); and]~~

100 [~~(ii) except that the board of directors may:]~~

101 [~~(A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or]~~

102 [~~(B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the credit
103 union for more than six months before the date a member-business loan is extended:]~~

104 (b) (i) A credit union may not extend credit [~~that is not a member-business loan]~~ to a
105 member if as a result of that extension of credit the total credit [~~that is not a member-business loan]~~
106 that the credit union has issued to that member exceeds at any one time:

107 (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:

108 (I) \$1,000; or

109 (II) 15% of capital and surplus up to a total of \$25,000; or

110 (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:

111 (I) \$25,000;

112 (II) 1% of capital and surplus; or

113 (III) 25% of the regular reserve.

114 (ii) Beginning March 24, 1999, a credit union may not extend a member-business loan to
115 a person:

116 (A) (I) if the person is a business entity, unless at least one individual having a controlling
117 interest in that business entity has been a member of the credit union for at least six months prior
118 to the date of the extension of the member-business loan; or

119 (II) if the person is an individual, unless the individual is a member of the credit union for
120 at least six months prior to the date of the extension of the member-business loan; or

121 (B) if as a result of the extension of the member-business loan, the total amount
 122 outstanding for all member-business loans that the credit union has extended to that person at any
 123 one time exceeds the lesser of:

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

125 (II) [~~\$250,000;~~ beginning on April 30, 2001, \$350,000;

126 (iii) Beginning April 30, 2001, the number specified in Subsections (7)(b)(B)(I) and (II)

127 shall increase on July 1 of each year by a percentage equal to the percentage increase in the

128 Consumer Price Index for all urban consumers prepared by the United States Bureau of Labor

129 Statistics for the preceding year beginning July 1 and ending June 30.

130 (c) (i) Beginning [~~March 24, 1999~~ April 30, 2001], a credit union may not extend a
 131 member-business loan if as a result of that member-business loan the credit union's aggregate
 132 member-business loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds
 133 [~~1.25~~ 1.75] times the sum of:

134 (A) the [~~actual~~] undivided earnings; [~~and~~]

135 (B) the [~~actual reserves other than the~~] regular reserves[~~;~~]; and

136 (C) the reserves other than the regular reserves.

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

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

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

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

143 (II) for which the repayment is insured or guaranteed by, or there is an advance

144 commitment to purchase by an agency of the federal government, a state, or a political subdivision
 145 of the state.

146 (d) A credit union may extend credit that is not a member-business loan in an amount that
 147 exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is fully secured by
 148 share or deposit savings in the credit union.

149 (e) [~~(i) Except as provided in Subsection (7)(c)(ii), a~~] A credit union may extend a
 150 member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(ii)(B)
 151 only if:

152 ~~[(A)]~~ (i) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(B) is
 153 secured by share or deposit savings in the credit union; or

154 ~~[(B)]~~ (ii) (A) the repayment of that portion that is in excess of the limits described in
 155 Subsection (7)(b)(ii)(B) is insured or guaranteed by, or there is an advance commitment to
 156 purchase that excess portion by, an agency of:

157 (I) the federal government;

158 (II) a state; or

159 (III) a political subdivision of the state~~[-];~~ and

160 ~~[(ii) Notwithstanding Subsection (7)(e)(i), a credit union may not extend a~~
 161 ~~member-business loan if the total amount financed by the credit union exceeds \$1,000,000.]~~

162 (B) the amount of credit described in Subsection (7)(e)(ii)(A) does not exceed \$2,000,000.

163 (f) For a member-business loan that is extended through a loan participation arrangement
 164 in accordance with Subsection 7-9-5(12):

165 (i) ~~[in applying the limitation of Subsection (7)(e);]~~ each credit union participating as the
 166 originator or as a participant in [the] a member-business loan may extend up to the lesser of:

167 (A) \$1,000,000 of the amount financed; [and] or

168 (B) the total credit amount allowed in accordance with Subsection (7)(b)(i) for each
 169 participating credit union; and

170 (ii) the requirement of Subsection (7)(b)(ii)(A) applies to membership in ~~[any]~~ the credit
 171 union ~~[that participates in]~~ originating the loan participation arrangement for the member-business
 172 loan.

173 (g) A member-business loan that was outstanding before May 3, 1999 may not be subject
 174 to the requirements of Subsection (7)(b)(ii), (7)(e), or (7)(f) at any time during the life of the loan
 175 notwithstanding whether:

176 (i) the term of the loan is extended;

177 (ii) the loan is subject to an annual review; or

178 (iii) the loan is subject to a term or event similar to those described in Subsection (1)(g)(i)
 179 or (ii).

180 (8) (a) A credit union may extend a loan or credit that is exempt from the requirements of
 181 Subsection (7)(a) or (d) through (f) if:

182 (i) a person applies for a loan at a bank having a branch or loan production facility in Utah

183 and:

184 (A) the application for the loan is denied;

185 (B) subject to Subsection (8)(c), the loan is offered on terms that the person reasonably
186 determines are unacceptable; or

187 (C) the loan application is not acted on by the bank within 30 days of the day the loan
188 application is submitted to the bank; or

189 (ii) the credit union extends credit as an originator or participant in a participation
190 arrangement and:

191 (A) the originating institution is a financial institution that is not a credit union; or

192 (B) a financial institution that is not a credit union chooses not to participate.

193 (b) A credit union may rely upon a written statement of the member or applicant for a loan
194 to demonstrate that the conditions of Subsection (8)(a)(i) or (ii) have been met.

195 (c) Subsection (8)(a)(i)(B) does not apply to a person determining that an interest rate
196 offered by a bank is unacceptable.

197 [~~8~~] (9) As provided in this chapter or in the credit union bylaws, the board of directors:

198 (a) within 30 days following the annual meeting of the members, shall appoint a
199 supervisory committee consisting of not less than three members;

200 (b) within 30 days after the annual meeting of the members, shall appoint:

201 (i) a credit committee consisting of not less than three members; or

202 (ii) a credit manager in lieu of a credit committee;

203 (c) shall appoint a president to serve as general manager;

204 (d) shall have an executive committee;

205 (e) may appoint an investment officer;

206 (f) shall elect a secretary;

207 (g) may appoint other officers and committees that it considers necessary;

208 (h) shall establish written credit policies, loan security requirements, loan investment,
209 personnel, and collection policies; and

210 (i) on or before January 31 of each year, shall provide for:

211 (i) share insurance for the shares and deposits of the credit union from the National Credit
212 Union Administration or successor federal agency; or

213 (ii) security expressly pledged for the payment of the shares and deposits in accordance

214 with Section 7-9-45.

215 ~~[(9)]~~ (10) A person may not be a member of more than one committee except as otherwise
216 provided in this chapter or in the credit union bylaws.

217 ~~[(10)]~~ (11) The president and secretary may not be the same person.

Legislative Review Note
as of 2-13-01 3:23 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel