

**Representative Jeff Alexander** proposes the following substitute bill:

**AMENDMENTS RELATED TO FINANCIAL  
INSTITUTIONS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Jeff Alexander**

**This act modifies the Financial Institutions title to address provisions related to credit unions and mutual associations and to make technical changes. The act addresses when certain nonexempt credit unions are prohibited from establishing new branches. This act addresses voting requirements for mutual associations. This act modifies definitions. The act addresses loan limitations. The act addresses credit union service organizations. The act addresses mergers involving credit unions. The act addresses operations of out-of-state credit unions. The act repeals certain provisions related to fields of membership and grandfathering and modifies other provisions related to fields of membership. This act provides for credit unions becoming nonexempt credit unions. This act provides for a competitive equity assessment and penalties for failure to pay the competitive equity assessment. This act modifies corporate franchise and nonexempt income tax provisions to address the taxation of credit unions.**

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

AMENDS:

**7-1-708**, as last amended by Chapter 49, Laws of Utah 1995

**7-7-10**, as last amended by Chapter 244, Laws of Utah 1985

**7-9-2**, as enacted by Chapter 16, Laws of Utah 1981

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

**7-9-5**, as last amended by Chapter 116, Laws of Utah 2001

**7-9-6**, as last amended by Chapter 329, Laws of Utah 1999



- 26           **7-9-11**, as last amended by Chapter 329, Laws of Utah 1999
- 27           **7-9-12**, as last amended by Chapter 329, Laws of Utah 1999
- 28           **7-9-16**, as last amended by Chapter 329, Laws of Utah 1999
- 29           **7-9-20**, as last amended by Chapter 329, Laws of Utah 1999
- 30           **7-9-26**, as last amended by Chapter 182, Laws of Utah 1996
- 31           **7-9-34**, as last amended by Chapter 178, Laws of Utah 1994
- 32           **7-9-37**, as last amended by Chapter 329, Laws of Utah 1999
- 33           **7-9-39**, as last amended by Chapter 329, Laws of Utah 1999
- 34           **7-9-39.5**, as enacted by Chapter 329, Laws of Utah 1999
- 35           **7-9-46**, as last amended by Chapter 49, Laws of Utah 1995
- 36           **7-9-51**, as enacted by Chapter 329, Laws of Utah 1999
- 37           **7-9-52**, as enacted by Chapter 329, Laws of Utah 1999
- 38           **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002
- 39           **59-7-101**, as last amended by Chapter 76, Laws of Utah 2002
- 40           **59-7-102**, as last amended by Chapters 76 and 286, Laws of Utah 2002

41 ENACTS:

- 42           **7-9-55**, Utah Code Annotated 1953
- 43           **7-9-56**, Utah Code Annotated 1953
- 44           **7-9-57**, Utah Code Annotated 1953

45 REPEALS:

- 46           **7-9-53**, as enacted by Chapter 329, Laws of Utah 1999
- 47           **7-9-54**, as enacted by Chapter 329, Laws of Utah 1999

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

49           Section 1. Section **7-1-708** is amended to read:

50           **7-1-708. Establishing branches and relocating offices -- Application and**  
51 **procedure for approval -- Limitations on nonexempt credit unions.**

52           (1) A Utah depository institution or an out-of-state depository institution with a Utah  
53 branch or seeking to acquire a branch in this state may establish one or more branches, or  
54 relocate a branch office or its main office in this state, subject to the prior approval of the  
55 commissioner.

56           (2) ~~[Approval]~~ The approval of the commissioner required by Subsection (1) may be

57 obtained by:

58 (a) filing an application with the department in a form the commissioner prescribes;

59 and

60 (b) supplementing the application with information the commissioner considers

61 material to determining whether to approve the application.

62 (3) (a) The commissioner shall approve or disapprove ~~[the]~~ an application within 30  
63 days after accepting ~~[it]~~ the application as complete.

64 (b) If the commissioner does not approve or disapprove an application within ~~[this]~~ the  
65 time~~[-it]~~ stated in Subsection (3)(a), the application is considered approved.

66 (4) (a) The commissioner shall cause a supervisor to make an investigation of the facts  
67 relevant or material to ~~[the]~~ an application.

68 (b) The supervisor that conducts the investigation required by Subsection (4)(a) shall  
69 submit written findings and recommendations to the commissioner.

70 (5) ~~[The]~~ An application, any supplemental information furnished by the applicant, and  
71 the findings and recommendations of the supervisor may be inspected by any person at the  
72 department's office, except those portions of the application the commissioner declares to be  
73 confidential to prevent a clearly unwarranted invasion of privacy, pursuant to the applicant's  
74 request.

75 (6) To protect the safety and soundness of the applicant, the commissioner may:

76 (a) approve an application subject to the terms and conditions the commissioner  
77 considers necessary; or

78 (b) disapprove an application.

79 (7) (a) The commissioner's approval of any application under this section is considered  
80 revoked, unless the office is opened and operating within one year of the date approved by the  
81 commissioner for commencement of operations.

82 (b) The commissioner may~~[-, upon written application made before the expiration of~~  
83 ~~that period and for good cause shown,]~~ extend the date for activation for up to two additional  
84 periods of not more than six months each~~[-:]~~:

85 (i) upon written application made before the expiration of a period; and

86 (ii) for good cause shown.

87 (8) An out-of-state depository institution with a branch in Utah is not subject to the

88 requirements of this section if the office or branch to be established or relocated is located  
89 outside of Utah.

90 (9) (a) Notwithstanding the other provisions of this section, and subject to Section  
91 7-9-58, an application of a nonexempt credit union to establish a branch that is to be located  
92 outside of the county in which the nonexempt credit union has the greatest number of branches  
93 may not be approved unless prior to the approval of the application the nonexempt credit union  
94 files a notice of election to pay a competitive equity assessment as provided in Section 7-9-56.

95 (b) For purposes of this Subsection (9), a nonexempt credit union is considered to be  
96 establishing a branch if the nonexempt credit union establishes:

97 (i) a loan production office; or

98 (ii) any other office or facility that:

99 (A) is owned or operated by:

100 (I) the nonexempt credit union; or

101 (II) a credit union service organization in which the nonexempt credit union holds an  
102 ownership interest;

103 (B) is open to the public; and

104 (C) provides any product or service of the nonexempt credit union to a member of the  
105 nonexempt credit union.

106 Section 2. Section **7-7-10** is amended to read:

107 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

108 (1) (a) An annual meeting of the members of each mutual association shall be held at  
109 the time and place fixed in the bylaws of the association.

110 (b) Special meetings may be called as provided in the bylaws.

111 (2) (a) The members entitled to vote at any meeting of the members shall be those who  
112 are members of record at the end of the calendar month next preceding the date of the meeting  
113 of members, except those who have ceased to be members.

114 (b) The number of votes [~~which members shall be~~] that a member is entitled to cast  
115 shall be determined in accordance with the books on the date determinative of entitlement to  
116 vote.

117 (3) In the determination of all questions requiring action by the members, each member  
118 shall be entitled to cast;

119 (a) one vote~~[, plus an additional vote for each \$100 or fraction thereof of the~~  
120 ~~withdrawal value of savings accounts, if any, held by the member. No member, however, may~~  
121 ~~cast more than 50 votes.]; and~~

122 (b) any additional vote that the member may cast under the bylaws of the association.

123 ~~(4) [At] (a) (i) Subject to Subsection (4)(a)(ii), at any meeting of the members, voting~~  
124 ~~may be;~~

125 (A) in person; or

126 (B) by proxy~~[, but no].~~

127 (ii) Notwithstanding Subsection (4)(a)(i), a proxy [shall be] is not eligible to be voted  
128 at any meeting unless the proxy has been filed with the secretary of the association, for  
129 verification, at least five days before the date of the meeting.

130 (b) Every proxy shall:

131 (i) be in writing ~~[and];~~

132 (ii) be signed by the member or [his] the member's duly authorized attorney in fact  
133 ~~[and, when filed with the secretary, shall, if so specified in the proxy.]; and~~

134 (iii) continue in force from year to year:

135 (A) when filed with the secretary;

136 (B) if so specified in the proxy; and

137 (C) until;

138 (I) revoked by a writing duly delivered to the secretary; or [until]

139 (II) superseded by subsequent proxies.

140 ~~(5) (a) At an annual meeting or at any special meeting of the members, any number of~~  
141 ~~members present in person or by proxy eligible to be voted constitutes a quorum.~~

142 (b) A majority of all votes cast at any meeting of members shall determine any  
143 question unless this chapter specifically provides otherwise.

144 ~~(6) (a) No notice of annual meetings of members need be given to members. [Notice]~~

145 (b) Subject to Subsection (6)(c), notice of each special meeting of members shall:

146 (i) state:

147 (A) the purpose for which the meeting is called~~[;];~~

148 (B) the place of the meeting~~[;]; and~~

149 (C) the time when [it] the meeting shall convene~~[;]; and [shall]~~

150 (ii) (A) be published:

151 (I) once a week for two consecutive calendar weeks (in each instance, on any day of the  
152 week) before the date on which the special meeting shall convene[;]; and

153 (II) in a newspaper of general circulation in the county in which the home office of the  
154 association is located[~~-In addition to publication of the notice, a copy of the notice shall~~]; and

155 (B) be posted in a conspicuous place in all offices of the association during the 30 days  
156 immediately preceding the date on which the special meeting convenes[; ~~provided, however,~~  
157 ~~that~~].

158 (c) No notice need be given of a meeting if all the members entitled to vote, vote in  
159 favor of an action at [any] the meeting of the members[~~, no notice need be given~~].

160 Section 3. Section 7-9-2 is amended to read:

161 **7-9-2. Description of credit unions.**

162 (1) A credit union is a cooperative, non-profit association, incorporated under this  
163 chapter to:

164 (a) encourage thrift among [its] the credit union's members[~~, to~~];

165 (b) create sources of credit at fair and reasonable rates of interest[;]; and [to]

166 (c) provide an opportunity for [its] the credit union's members to use and control their  
167 resources on a democratic basis in order to improve their economic and social condition.

168 (2) Essential to the fulfillment of a credit union's public mission is a meaningful  
169 affinity and bond among members, manifested by a commonality of routine interaction, shared  
170 and related work experiences, interest or activities, or an otherwise well understood sense of  
171 cohesion or identity.

172 Section 4. Section 7-9-3 is amended to read:

173 **7-9-3. Definitions.**

174 As used in this chapter:

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

176 [~~(a) has a similar:~~]

177 [~~(i) interest;~~]

178 (i) constitute the members of a formal association organized for:

179 (A) an identifiable interest;

180 (B) an identifiable purpose;

181 ~~[(ii)]~~ (C) a specific profession; or  
182 ~~[(iii)]~~ (D) a specific occupation; or  
183 ~~[(iv) formal association with an identifiable purpose; or]~~  
184 ~~[(b) is]~~ (ii) are employed by a common employer.  
185 (b) "Association" does not include a group of persons that is:  
186 (i) identified or created primarily on the basis of a relationship between any person  
187 and:  
188 (A) a consumer;  
189 (B) a customer; or  
190 (C) a client; or  
191 (ii) created primarily for the purpose of expanding the membership in a credit union.  
192 (2) "Capital and surplus" means:  
193 (a) shares;  
194 (b) deposits;  
195 (c) reserves; and  
196 (d) undivided earnings.  
197 (3) "Corporate credit union" means any credit union organized pursuant to any state or  
198 federal act for the purpose of serving other credit unions.  
199 (4) "Credit union service organization" means a service organization that provides  
200 services that are:  
201 (a) subject to Subsection (4)(b)(i), permitted by rule made by the commissioner in  
202 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and  
203 (b) (i) except for the extension of credit by the service organization, limited primarily  
204 to:  
205 (A) credit unions that hold an ownership interest in the service organization;  
206 (B) members of credit unions that hold an ownership interest in the service  
207 organization; or  
208 (C) members of credit unions that contract with the service organization; and  
209 (ii) for purposes of the extension of credit by the service organization, limited to  
210 members of a credit union that holds an ownership interest in the service organization.  
211 ~~[(4)]~~ (5) "Deposits" means that portion of the capital paid into the credit union by

212 members on which a specified rate of interest will be paid.

213 (6) "~~[limited field]~~ Field of membership" means persons designated as eligible for  
214 credit union membership in accordance with:

215 (a) Section 7-9-51 ~~[or 7-9-53.]; and~~

216 (b) the bylaws of the credit union.

217 ~~[(5)]~~ (7) "Immediate family" means parents, spouse, surviving spouse, children, and  
218 siblings of the member.

219 ~~[(7)]~~ (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,  
220 the proceeds of which will be used for:

221 (i) a commercial purpose;

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

223 (iii) an agricultural purpose.

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

225 (i) that is fully secured by a lien on a one- to four- family dwelling that is the primary  
226 residence of a member;

227 (ii) that is fully secured by:

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

229 (B) deposits in other financial institutions;

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

232 (A) the federal government;

233 (B) a state; or

234 (C) a political subdivision of a state; or

235 (iv) that is granted by a corporate credit union to another credit union.

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

238 (9) "Nonexempt credit union" means a credit union that is a nonexempt credit union  
239 under Section 7-9-55.

240 ~~[(9)]~~ (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts  
241 from which owners are permitted to make withdrawals by negotiable or transferable  
242 instruments or other orders for the purpose of making transfers to other persons or to the



243 owner.

244 [~~(10)~~] (11) "Shares" means that portion of the capital paid into the credit union by  
245 members on which dividends may be paid.

246 Section 5. Section **7-9-5** is amended to read:

247 **7-9-5. Powers of credit unions.**

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

250 (1) make contracts;

251 (2) sue and be sued;

252 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and  
253 equipment as the directors consider necessary or incidental to the operation and business of the  
254 credit union, but the value of the real property may not exceed 7% of credit union assets, unless  
255 approved by the commissioner;

256 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in  
257 whole or in part, necessary or incidental to its operation;

258 (5) incur and pay necessary and incidental operating expenses;

259 (6) require an entrance or membership fee;

260 (7) receive the funds of its members in payment for:

261 (a) shares;

262 (b) share certificates;

263 (c) deposits;

264 (d) deposit certificates;

265 (e) share drafts;

266 (f) NOW accounts; and

267 (g) other instruments;

268 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third  
269 party with prior authorization in writing, including, but not limited to, drafts drawn on the  
270 credit union for payment to the member or any third party, in accordance with the procedures  
271 established by the board of directors, including, but not limited to, drafts, third-party  
272 instruments, and other transaction instruments, as provided in the bylaws;

273 (9) charge fees for its services;

274 (10) extend credit to its members, at rates established in accordance with the bylaws or  
275 by the board of directors;

276 (11) extend credit secured by real estate;

277 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan  
278 participation arrangements [with other credit unions, credit union organizations, or financial  
279 organizations], in accordance with written policies of the board of directors[; if] with one or  
280 more:

281 (i) other credit unions;

282 (ii) credit union service organizations; or

283 (iii) other financial organizations; and

284 (b) except as provided in Section 7-9-57, make co-lending arrangements, including  
285 loan participation arrangements, in accordance with Subsection (12)(a) subject to the  
286 following:

287 (i) the credit union or credit union service organization that originates a loan for which  
288 [participation] co-lending arrangements are made [retains] shall retain an interest of at least  
289 10% of the loan;

290 (ii) on or after May 5, 2003, the originating credit union or credit union service  
291 organization may sell to a credit union an interest in a co-lending arrangement that involves a  
292 member-business loan only if the person receiving the member-business loan is a member of  
293 the credit union to which the interest is sold; and

294 (iii) on or after May 5, 2003, the originating credit union or credit union service  
295 organization may sell to a credit union service organization an interest in a co-lending  
296 arrangement that involves a member-business loan only if the person receiving the  
297 member-business loan is a member of a credit union that holds an interest in the credit union  
298 service organization to which the interest is sold;

299 (13) sell and pledge eligible obligations in accordance with written policies of the  
300 board of directors;

301 (14) engage in activities and programs of the federal government or this state or any  
302 agency or political subdivision of the state, when approved by the board of directors and not  
303 inconsistent with this chapter;

304 (15) act as fiscal agent for and receive payments on shares and deposits from the

305 federal government, this state, or its agencies or political subdivisions not inconsistent with the  
306 laws of this state;

307 (16) borrow money and issue evidence of indebtedness for a loan or loans for  
308 temporary purposes in the usual course of its operations;

309 (17) discount and sell notes and obligations;

310 (18) sell all or any portion of its assets to another credit union or purchase all or any  
311 portion of the assets of another credit union;

312 (19) invest funds as provided in this title and in its bylaws;

313 (20) maintain deposits in insured depository institutions as provided in this title and in  
314 its bylaws;

315 (21) (a) hold membership in corporate credit unions organized under this chapter or  
316 under other state or federal statutes; and

317 (b) hold membership or equity interest in associations and organizations of credit  
318 unions, including credit union service organizations;

319 (22) declare and pay dividends on shares, contract for and pay interest on deposits, and  
320 pay refunds of interest on loans as provided in this title and in its bylaws;

321 (23) collect, receive, and disburse funds in connection with the sale of negotiable or  
322 nonnegotiable instruments and for other purposes that provide benefits or convenience to its  
323 members, as provided in this title and in its bylaws;

324 (24) make donations for the members' welfare or for civic, charitable, scientific, or  
325 educational purposes as authorized by the board of directors or provided in its bylaws;

326 (25) act as trustee of funds permitted by federal law to be deposited in a credit union as  
327 a deferred compensation or tax deferred device, including, but not limited to, individual  
328 retirement accounts as defined by Section 408, Internal Revenue Code;

329 (26) purchase reasonable accident and health insurance, including accidental death  
330 benefits, for directors and committee members through insurance companies licensed in this  
331 state as provided in its bylaws;

332 (27) provide reasonable protection through insurance or other means to protect board  
333 members, committee members, and employees from liability arising out of consumer  
334 legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in  
335 its bylaws;

- 336 (28) reimburse directors and committee members for reasonable and necessary  
337 expenses incurred in the performance of their duties;
- 338 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of  
339 credit unions or credit union members by automated or electronic means and hold membership  
340 in entities established to promote and effectuate these systems, if:
- 341 (a) the participation is not inconsistent with the law and rules of the department; and  
342 (b) any credit union participating in any system notifies the department as provided by  
343 law;
- 344 (30) issue credit cards and debit cards to allow members to obtain access to their  
345 shares, deposits, and extensions of credit;
- 346 (31) provide any act necessary to obtain and maintain membership in the credit union;
- 347 (32) exercise incidental powers necessary to carry out the purpose for which a credit  
348 union is organized;
- 349 (33) undertake other activities relating to its purpose as its bylaws may provide;
- 350 (34) engage in other activities, exercise other powers, and enjoy other rights,  
351 privileges, benefits, and immunities authorized by rules of the commissioner;
- 352 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement  
353 accounts, credit union employee pension plans, and other employee benefit programs; and
- 354 (36) advertise to the general public the products and services offered by the credit  
355 union if the advertisement prominently discloses that to use the products or services of the  
356 credit union a person is required to:
- 357 (a) be eligible for membership in the credit union; and  
358 (b) become a member of the credit union.
- 359 Section 6. Section **7-9-6** is amended to read:
- 360 **7-9-6. Formation of corporation to conduct credit union -- Approval of**  
361 **commissioner.**
- 362 (1) (a) Ten or more incorporators belonging to the same group of 200 persons or more  
363 having a [~~limited~~] field of membership may, with the approval of the commissioner, form a  
364 corporation to conduct a credit union under:
- 365 (i) this chapter;  
366 (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act; and

367 (iii) Chapter 1, General Provisions.

368 (b) This chapter takes precedence over conflicting provisions of other state law  
369 governing:

370 (i) the formation of the corporation; and

371 (ii) the duties and obligations of:

372 (A) the corporation;

373 (B) the corporation's officers; and

374 (C) the corporation's shareholders or members.

375 (2) The commissioner may grant the approval referenced in Subsection (1) if the  
376 commissioner finds that:

377 (a) the proposed [~~limited~~] field of membership is favorable to the success of the credit  
378 union;

379 (b) the standing of the proposed membership will give assurance that its affairs will be  
380 administered in accordance with this chapter;

381 (c) the proposed credit union has a reasonable promise of financial viability; and

382 (d) formation of the credit union would not result in a substantial adverse financial  
383 impact on an existing credit union having the same or substantially the same [~~limited~~] field of  
384 membership.

385 (3) (a) Except as provided in Subsection (3)(b) and in addition to the requirements of  
386 Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.

387 (b) Notwithstanding Subsection (3)(a):

388 (i) if the proposed credit union has a [~~limited~~] field of membership that does not base  
389 eligibility on residence in a county, the persons seeking formation of the proposed credit union  
390 are not required to provide the notice required under Subsection 7-1-704(3); and

391 (ii) a credit union may not be required to obtain federal insurance if the credit union  
392 complies with Subsection 7-9-45(2).

393 Section 7. Section **7-9-11** is amended to read:

394 **7-9-11. Bylaws and amendments to be approved.**

395 (1) A credit union may not receive payments on shares, deposits, or certificates, or  
396 make any loans or other transactions, until its bylaws have been approved in writing by the  
397 commissioner.

398 (2) An amendment to a credit union's bylaws does not become operative until the  
399 amendment to the bylaws is approved by the commissioner.

400 (3) (a) If the amendment to the bylaws of a credit union expands the [limited] field of  
401 membership of a credit union as described in Subsection 7-9-52(1), the commissioner's  
402 approval of the amendment is subject to Section 7-9-52.

403 ~~[(b) If the amendment to the bylaws of a credit union terminates the grandfathering of a~~  
404 ~~limited field of membership under Section 7-9-54, the commissioner's approval of the~~  
405 ~~amendment is subject to Section 7-9-54.]~~

406 ~~[(c)]~~ (b) If the bylaws or an amendment to the bylaws of a credit union adds an  
407 association to the [limited] field of membership of the credit union, the commissioner may  
408 require that the credit union provide written confirmation from the association that the  
409 association has agreed to be served by the credit union.

410 Section 8. Section **7-9-12** is amended to read:

411 **7-9-12. Contents of bylaws.**

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

- 413 (1) the name of the credit union;
- 414 (2) the purpose for which [it] the credit union was formed;
- 415 (3) a [limited] field of membership of the credit union that complies with Section  
416 7-9-51 ~~[or 7-9-53]~~;
- 417 (4) the number of directors and procedures for their election;
- 418 (5) the term of directors;
- 419 (6) whether a credit manager, credit committee, or combination of both shall be  
420 responsible for credit functions of the credit union;
- 421 (7) the duties of the officers;
- 422 (8) the time of year of the annual meeting of members;
- 423 (9) the manner in which members shall be notified of meetings;
- 424 (10) the number of members which shall constitute a quorum at meetings;
- 425 (11) the manner of amending;
- 426 (12) the manner in which officers may act as surety; and
- 427 (13) such other matters, rules, and regulations as the board of directors consider  
428 necessary.

429 Section 9. Section **7-9-16** is amended to read:

430 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**  
431 **of membership.**

432 (1) A person within the [~~limited~~] field of membership of a credit union may be admitted  
433 to membership, upon:

- 434 (a) payment of any required entrance or membership fee;
- 435 (b) payment for one or more shares; and
- 436 (c) compliance with this chapter and the bylaws of the credit union.

437 (2) A member who is eligible for membership in a credit union at the time the member  
438 is admitted as a member but who is no longer in the [~~limited~~] field of membership of the credit  
439 union may retain membership in the credit union unless otherwise provided in the bylaws of  
440 the credit union.

441 (3) A member of the credit union may not be held personally or individually liable for  
442 payment of the credit union's debts.

443 (4) The credit union may close the account of any member whose actions have resulted  
444 in any financial loss to the credit union.

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

446 Section 10. Section **7-9-20** is amended to read:

447 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

450 (2) The bylaws may provide balloting by:

- 451 (a) mail;
- 452 (b) ballot box; or
- 453 (c) both mail and ballot box.

454 (3) Voting may not be by proxy.

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

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

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

- 460 (a) act upon applications for membership;
- 461 (b) act upon expulsion of members;
- 462 (c) fix the amount of surety bond required of each officer or employee having custody  
463 of funds;
- 464 (d) determine the rate of interest or dividend allowed on shares and deposits;
- 465 (e) determine the terms and conditions of credit granted to members;
- 466 (f) lend money, borrow money, and pledge security for any borrowing;
- 467 (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in  
468 the supervisory committee until the election and qualification of officers to fill those vacancies;
- 469 (h) appoint up to two alternate directors as provided in the bylaws;
- 470 (i) fix the amount of the entrance fee;
- 471 (j) declare dividends and their amount;
- 472 (k) make recommendations to meetings of the members relative to amendments to the  
473 articles of incorporation, and transact any other business of the credit union; and
- 474 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to  
475 any one member, up to the limitations described in ~~[Subsection]~~ Subsections (7) and (8).
- 476 (7) (a) The credit that may be outstanding or available by a credit union at any one time  
477 is subject to the limitations described in ~~[Subsections]~~ this Subsection (7)~~[(b) and (c)]~~:
- 478 (i) except as provided in:
- 479 (A) Subsection ~~[(7)(d) through (7)(f); and] (8); or~~
- 480 (B) Section 7-9-57; and
- 481 (ii) except that the board of directors may:
- 482 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or
- 483 (B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the  
484 credit union for more than six months before the date a member-business loan is extended.
- 485 (b) (i) A credit union may not extend credit that is not a member-business loan to a  
486 member if as a result of that extension of credit the total credit that is not a member-business  
487 loan that the credit union has issued to that member exceeds at any one time:
- 488 (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:
- 489 (I) \$1,000; or
- 490 (II) 15% of capital and surplus up to a total of \$25,000; or



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

492 (I) \$25,000;

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

494 (III) 25% of the regular reserve.

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

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

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

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

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

506 (II) \$250,000.

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

511 (A) the actual undivided earnings; and

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

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

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

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

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

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

522 (d) (i) A credit union service organization may extend credit to a member of a credit  
523 union holding an ownership interest in the credit union service organization only if the credit  
524 union in which the person is a member is not prohibited from extending that credit to that  
525 member under this Subsection (7) and Subsection (8).

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

530 (iii) If a person seeking an extension of credit from a credit union service organization  
531 is a member of more than one credit union holding an ownership interest in the credit union  
532 service organization, the person shall specify the credit union to which the extension of credit  
533 is attributed under Subsection (7)(d)(ii).

534 (iv) This Subsection (7)(d) effects only an extension of credit:

535 (A) that is extended on or after May 5, 2003; and

536 (B) by:

537 (I) a credit union service organization; or

538 (II) a credit union organized under this chapter.

539 ~~[(d)]~~ (8) (a) A credit union may extend credit that is not a member-business loan in an  
540 amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is  
541 fully secured by share or deposit savings in the credit union.

542 ~~[(e)]~~ (b) (i) Except as provided in Subsection ~~[(7)(e)]~~ (8)(b)(ii), a credit union may  
543 extend a member-business loan in an amount that exceeds the limits described in Subsection  
544 (7)(b)(ii)(B) only if:

545 (A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(B) is  
546 secured by share or deposit savings in the credit union; or

547 (B) the repayment of that portion that is in excess of the limits described in Subsection  
548 (7)(b)(ii)(B) is insured or guaranteed by, or there is an advance commitment to purchase that  
549 excess portion by, an agency of:

550 (I) the federal government;

551 (II) a state; or

552 (III) a political subdivision of the state.

553 (ii) Notwithstanding Subsection [~~(7)(e)~~] (8)(b)(i), a credit union may not extend a  
554 member-business loan if the total amount financed by the credit union exceeds \$1,000,000.

555 [~~(f)~~] (c) For a member-business loan that is extended through a loan participation  
556 arrangement in accordance with Subsection 7-9-5(12):

557 (i) in applying the limitation of Subsection [~~(7)(e)~~] (8)(b), each credit union  
558 participating in the member-business loan may extend up to \$1,000,000 of the amount  
559 financed; and

560 (ii) the requirement of Subsection (7)(b)(ii)(A) applies to membership in any credit  
561 union that participates in the loan participation arrangement for the member-business loan.

562 [~~(8)~~] (9) As provided in this chapter or in the credit union bylaws, the board of  
563 directors:

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

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

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

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

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

570 (d) shall have an executive committee;

571 (e) may appoint an investment officer;

572 (f) shall elect a secretary;

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

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

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

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

579 (ii) security expressly pledged for the payment of the shares and deposits in accordance  
580 with Section 7-9-45.

581 [~~(9)~~] (10) A person may not be a member of more than one committee except as  
582 otherwise provided in this chapter or in the credit union bylaws.

583 [~~(10)~~] (11) The president and secretary may not be the same person.

584 Section 11. Section **7-9-26** is amended to read:

585 **7-9-26. Loans to members -- Investment officers -- Investments.**

586 (1) ~~[The]~~ Subject to Subsections 7-9-20(7) and (8), capital and surplus of the credit  
587 union shall be loaned to the members for the purposes and upon the endorsements or security  
588 and the terms as the bylaws provide.

589 (2) Within 30 days after the annual meeting of the members the board of directors may  
590 appoint one or more investment officers who shall have responsibilities for the credit union  
591 investment portfolio based upon policy established by the board of directors and as provided in  
592 this chapter or in the bylaws.

593 (3) The credit union by action of its board of directors may invest its funds as follows:

594 (a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed  
595 as to principal and interest by, the United States of America or any of its agencies, or in any  
596 trusts established by investing directly or collectively in these instruments;

597 (b) in obligations of any state of the United States, the District of Columbia, the  
598 Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their  
599 political subdivisions;

600 (c) in certificates of deposit or accounts issued by a federally insured state or national  
601 depository institution;

602 (d) in loans to, or in shares or deposits of, other federally insured credit unions, central  
603 credit unions, corporate credit unions, or a central liquidity facility established under state or  
604 federal law;

605 (e) in shares, stocks, loans, or other obligations of any organization, corporation, or  
606 association, if the membership or ownership of the organization, corporation, or association is  
607 primarily confined or restricted to credit unions, and if the purpose for which it is organized is  
608 to strengthen or advance the development of credit unions or credit union organizations; and

609 (f) in other investments that are reasonable and prudent.

610 Section 12. Section **7-9-34** is amended to read:

611 **7-9-34. Tax exemption of credit unions.**

612 (1) Except as ~~[otherwise]~~ provided in ~~[this section]~~ Subsection (2), a credit ~~[unions]~~  
613 union organized under this chapter ~~[or prior law are]~~ is exempt from ~~[taxation]~~ Title 59,  
614 Chapter 7, Corporate Franchise and Income Taxes.

615 ~~[(2) Any real property or any tangible personal property owned by the credit union~~  
616 ~~shall be subject to taxation to the same extent as other similar property is taxed.]~~

617 ~~[(3) For purposes of the corporate tax, credit unions shall be governed by Section~~  
618 ~~59-7-102.]~~

619 ~~[(4) This section does not exempt credit unions from sales or use taxes, or fees owed to~~  
620 ~~the department in accordance with this title and rules of the department.]~~

621 (2) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title  
622 59, Chapter 7, Corporate Franchise and Income Taxes, beginning on the first day of the month  
623 immediately following the day on which the credit union becomes a nonexempt credit union  
624 under Section 7-9-55.

625 Section 13. Section **7-9-37** is amended to read:

626 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**  
627 **acquired credit union.**

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

631 Section 14. Section **7-9-39** is amended to read:

632 **7-9-39. Voluntary merger.**

633 (1) Any credit union may merge with another credit union under the existing charter of  
634 the other credit union when all of the following have occurred:

635 (a) the majority of the directors of each merging credit union votes in favor of the  
636 merger plan;

637 (b) the commissioner approves the merger plan;

638 (c) the majority of the members of each merging credit union present at a meeting  
639 called for the purpose of considering the merger plan votes to approve the merger plan, but a  
640 vote of the membership of the surviving credit union is not required if its board of directors  
641 determines that the merger will not have any significant effect on the organization,  
642 membership, or financial condition of the credit union; and

643 (d) (i) the National Credit Union Administration or its successor federal deposit  
644 insurance agency approves the merger plan and commits to insure deposits of the surviving  
645 credit union; or

646 (ii) the commissioner approves the surviving credit union to operate without federal  
647 deposit insurance in accordance with Section 7-9-45.

648 (2) Upon merger, the chair of the board and secretary of each credit union shall  
649 execute, and file with the department, a certificate of merger setting forth:

650 (a) the time and place of the meeting of the board of directors at which the plan was  
651 approved;

652 (b) the vote by which the directors approved the plan;

653 (c) a copy of the resolution or other action by which the plan was approved;

654 (d) the time and place of the meeting of the members at which the plan was approved;

655 (e) the vote by which the members approved the plan; and

656 (f) the effective date of the merger, which shall be:

657 (i) the date on which the last approval or vote required under Subsection (1) was  
658 obtained; or

659 (ii) a later date specified in the merger plan.

660 (3) On the effective date of any merger:

661 (a) all property, property rights, and interests of the merged credit union shall vest in  
662 the surviving credit union without deed, endorsement, or other instrument of transfer; and

663 (b) all debts, obligations, and liabilities of the merged credit union are considered to  
664 have been assumed by the surviving credit union.

665 [~~(4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered~~  
666 ~~under this chapter, the residents of a county in the limited field of membership of the merging~~  
667 ~~credit union may not be added to the limited field of membership of the surviving credit union,~~  
668 ~~except that the surviving credit union:]~~

669 [~~(a) may admit as a member any member of the merging credit union that is not in the~~  
670 ~~limited field of membership of the surviving credit union if the member of the merging credit~~  
671 ~~union was a member of that credit union at the time of merger; and]~~

672 [~~(b) may service any member-business loan of the merging credit union until the~~  
673 ~~member-business loan is paid in full.]~~

674 [(5)(a)] (4) This section shall be interpreted, whenever possible, to permit a credit  
675 union chartered under this chapter to merge with a credit union chartered under any other law if  
676 the preservation of membership interest is concerned.

677 ~~[(b) The commissioner may under Subsection (1)(b) approve a merger plan that~~  
678 ~~includes the addition of the residents of a county in the limited field of membership of the~~  
679 ~~merging credit union to the limited field of membership of the surviving credit union if the~~  
680 ~~commissioner finds that:]~~

681 ~~[(i) the expansion of the limited field of membership of the surviving credit union is~~  
682 ~~necessary for that credit union's safety and soundness; and]~~

683 ~~[(ii) the expanded limited field of membership of the surviving credit union meets the~~  
684 ~~criteria stated in Subsection 7-9-52(3)(c).]~~

685 ~~[(6) If the commissioner approves a merger plan under Subsection (5)(b) under which~~  
686 ~~the surviving credit union's limited field of membership after the merger will include residents~~  
687 ~~of more than one county, Subsections (6)(a) through (e) apply to the surviving credit union.]~~

688 ~~[(a) The domicile-county of the surviving credit union is:]~~

689 ~~[(i) if the credit union does not have a limited field of membership under Subsection~~  
690 ~~7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of~~  
691 ~~branches as of the date the merger is effective; or]~~

692 ~~[(ii) if the credit union has a limited field of membership under Subsection~~  
693 ~~7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union~~  
694 ~~under Section 7-9-53;]~~

695 ~~[(b) Within the surviving credit union's domicile-county, the surviving credit union~~  
696 ~~may establish, relocate, or otherwise change the physical location of the credit union's:]~~

697 ~~[(i) main office; or]~~

698 ~~[(ii) branch.]~~

699 ~~[(c) Within a county other than the domicile-county that is in the limited field of~~  
700 ~~membership of the surviving credit union after the merger, the surviving credit union may not:]~~

701 ~~[(i) establish a main office or branch if the main office or branch was not located in the~~  
702 ~~county as of the date that the merger is effective;]~~

703 ~~[(ii) participate in a service center in which it does not participate as of the date that the~~  
704 ~~merger is effective; or]~~

705 ~~[(iii) relocate the surviving credit union's main office or a branch located in the county~~  
706 ~~as of the date that the merger is effective unless the commissioner finds that the main office or~~  
707 ~~branch is being relocated within a three-mile radius of the original location of the main office~~

708 or branch.]

709 [~~(d) After the merger, the surviving credit union may admit as a member:]~~

710 [~~(i) a person in the surviving credit union's limited field of membership after the date~~  
711 ~~that the merger is effective; or]~~

712 [~~(ii) a person belonging to an association that:]~~

713 [~~(A) is added to the limited field of membership of the credit union; and]~~

714 [~~(B) resides in the domicile-county of the surviving credit union, as defined in Section~~  
715 ~~7-9-53.]~~

716 [~~(e) In addition to any requirement under this Subsection (6), a surviving credit union~~  
717 ~~shall comply with any requirement under this title for the establishment, relocation, or change~~  
718 ~~in the physical location of a main office or branch of a credit union.]~~

719 (5) Except as provided in Section 7-9-39.5, the commissioner may not approve a  
720 merger plan under which a nonexempt credit union merges with another credit union before the  
721 day on which the nonexempt credit union files a notice of election to pay the competitive  
722 equity assessment as provided in Section 7-9-56.

723 Section 15. Section **7-9-39.5** is amended to read:

724 **7-9-39.5. Supervisory merger.**

725 [~~ff~~] Notwithstanding Subsection 7-9-39(5), a nonexempt credit union [is merged] may  
726 merge with another credit union as a result of a supervisory action under Chapter 2 or 19[; the  
727 commissioner may permit the surviving credit union to have a limited field of membership that  
728 is larger than a limited field of membership permitted under Section 7-9-51].

729 Section 16. Section **7-9-46** is amended to read:

730 **7-9-46. Out-of-state credit unions -- Authorization to do business in state --**  
731 **Supervision -- Examination.**

732 (1) As used in this section "out-of-state credit union" means any credit union whose  
733 home state is not Utah.

734 (2) An out-of-state credit union may maintain a branch in this state only if:

735 (a) maintaining the Utah branch is permissible under applicable law, including  
736 Sections 7-1-702 and 7-1-708 in the case of a state chartered credit union; [~~and]~~

737 (b) the branch has been authorized by:

738 (i) the department and the chartering authority of the credit union's home state in the



739 case of a state chartered credit union; or

740 (ii) the National Credit Union Administration or successor agency in the case of a  
741 federally chartered credit union[-]; and

742 (c) the branch will not serve a member of the out-of-state credit union who is a  
743 member of the credit union based solely on the member residing in a geographic area located in  
744 whole or in part in Utah.

745 (3) The commissioner may examine and supervise all out-of-state credit unions with a  
746 branch in the state, except federal credit unions, in the same manner as the commissioner  
747 examines and supervises credit unions in this state.

748 Section 17. Section **7-9-51** is amended to read:

749 **7-9-51. Field of membership.**

750 (1) [~~Except as provided in Subsection (3), the limited~~] The field of membership of a  
751 credit union may include only the following:

752 (a) the immediate family of a member of the credit union;

753 (b) the employees of the credit union;

754 (c) residents of [~~a single county~~] one or more counties; [~~and~~]

755 (d) one or more associations[-]; and

756 (e) if approved by the commissioner in accordance with Subsection 7-9-52(5),

757 residents of:

758 (i) a city of the third class as classified in Section 10-2-301; or

759 (ii) a town as classified in Section 10-2-301.

760 (2) A credit union may have a [~~limited~~] field of membership that is more restrictive  
761 than the [~~limited~~] field of membership described in Subsection (1).

762 [~~(3) A credit union may have a limited field of membership that is less restrictive than~~  
763 ~~the limited field of membership described in Subsection (1) if the limited field of membership~~  
764 ~~of the credit union:]~~

765 [~~(a) is determined under Subsection 7-9-53(2)(c) or (2)(d);]~~

766 [~~(b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or]~~

767 [~~(c) is permitted by the commissioner after a merger in accordance with Section~~  
768 ~~7-9-39.5:]~~

769 [~~(4) If a credit union includes the residents of one county in its limited field of~~

770 membership, the credit union may not change its limited field of membership to include a  
771 different county than the county that is first included in the limited field of membership of the  
772 credit union.]

773 Section 18. Section **7-9-52** is amended to read:

774 **7-9-52. Expansion of a field of membership.**

775 (1) The commissioner shall comply with Subsection (2) if the commissioner receives a  
776 request to approve an amendment to the bylaws of a credit union that expands the credit union's  
777 [limited] field of membership to include:

778 (a) residents of [~~one~~] a county; [~~or~~]

779 (b) an association consisting of 50 or more persons[~~;~~]; or

780 (c) subject to the requirements of Subsection (5), residents of:

781 (i) a city of the third class as classified in Section 10-2-301; or

782 (ii) a town as classified in Section 10-2-301.

783 (2) If the conditions of Subsection (1) are met, the commissioner shall:

784 (a) give notice of the request in the manner and to the extent the commissioner  
785 considers appropriate to institutions subject to the jurisdiction of the department that:

786 (i) are located in the county, if the [limited] field of membership is being expanded to  
787 include residents of a county; [~~or~~]

788 (ii) serve or may serve the association described in Subsection (1)(b), if that association  
789 is being added to the [limited] field of membership; [~~and~~] or

790 (iii) are located in the county in which a city or town described in Subsection (1)(c) is  
791 located, if the field of membership is being expanded to include residents of the city or town;  
792 and

793 (b) cause a supervisor to examine and submit written findings and recommendations to  
794 the commissioner as to:

795 (i) whether the credit union is adequately capitalized;

796 (ii) whether the credit union has the financial capacity to serve the financial needs of  
797 the expanded [limited] field of membership in a safe and sound manner;

798 (iii) whether the credit union has the managerial expertise to serve the financial needs  
799 of the expanded [limited] field of membership in a safe and sound manner;

800 (iv) any potential harm the expansion of the [limited] field of membership may have on

801 the institutions described in Subsection (2)(a); and

802 (v) the probable beneficial effect of the expansion.

803 (3) The commissioner may approve the amendment to the bylaws described in  
804 Subsection (1) if the commissioner:

805 (a) has given the notice required under Subsection (2)(a);

806 (b) received the written findings and recommendations of the supervisor under  
807 Subsection (2)(b); and

808 (c) finds that:

809 (i) the credit union is adequately capitalized;

810 (ii) the credit union has the financial capacity to serve the financial needs of the  
811 expanded [limited] field of membership in a safe and sound manner;

812 (iii) the credit union has the managerial expertise to serve the financial needs of the  
813 expanded [limited] field of membership in a safe and sound manner; and

814 (iv) any potential harm the expansion of the [limited] field of membership may have on  
815 other institutions subject to the jurisdiction of the department does not clearly outweigh the  
816 probable beneficial effect of the expansion.

817 (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the  
818 expansion of a credit union's [limited] field of membership.

819 [~~(5) This section may not be interpreted to permit a credit union to:~~]

820 [~~(a) expand its limited field of membership to include residents of more than one  
821 county; or~~]

822 [~~(b) change the county included in the limited field of membership of a credit union, if  
823 any;~~]

824 (5) If the commissioner receives a request to approve an amendment to the bylaws of a  
825 credit union that expands the credit union's field of membership to include residents of a city or  
826 town described in Subsection (1)(c), before approving the expanded field of membership, in  
827 addition to the requirements of Subsection (2), the commissioner shall:

828 (a) require that a supervisor examine and submit written findings and recommendations  
829 to the commissioner as to whether but for the residents described in Subsection (1)(c) being  
830 included in the field of membership of the credit union, no depository institutions would likely  
831 be located within a reasonable distance from the city or town described in Subsection (1)(c);

832 and

833 (b) find that but for the residents described in Subsection (1)(c) being included in the  
834 field of membership of the credit union, no depository institutions would likely be located  
835 within a reasonable distance from the city or town described in Subsection (1)(c).

836 Section 19. Section **7-9-55** is enacted to read:

837 **7-9-55. Nonexempt credit unions.**

838 (1) For purposes of this section, "related credit unions" means two or more credit  
839 unions:

840 (a) that:

841 (i) each have a main office in this state; and

842 (ii) are established in whole or in part with assets from a credit union that as of May 5,  
843 2003, has a field of membership that includes all residents of two or more counties; and

844 (b) if:

845 (i) the names of the two or more credit unions include one or more similar words,  
846 except for "credit union"; or

847 (ii) the two or more credit unions hold an ownership interest in an association or  
848 organization described in Subsection 7-9-5(21) except for:

849 (A) a corporate credit union;

850 (B) a trade association; or

851 (C) an association representing credit unions generally.

852 (2) (a) A credit union organized under this chapter is a nonexempt credit union under  
853 this section on the day on which:

854 (i) if the credit union is not a related credit union:

855 (A) the credit union files a quarterly report in accordance with Section 7-1-317 on or  
856 after the date described in Subsection (2)(c), if the quarterly report is the second consecutive  
857 quarterly report that shows that the assets of the credit union equal or exceed \$100,000,000;

858 and

859 (B) on or after May 5, 2003, the credit union has a field of membership that includes  
860 all residents of two or more counties; or

861 (ii) the related credit union files a quarterly report in accordance with Section 7-1-317  
862 on or after the date described in Subsection (2)(c), if the quarterly report is the second

863 consecutive quarterly report that shows assets that if aggregated with the assets of all related  
864 credit unions equal or exceed \$100,000,000.

865 (b) For purposes of Subsection (1)(a)(ii) or (2)(a)(i)(B) only:

866 (i) residents of a county that is added to the field of membership of a credit union as a  
867 result of a supervisory action under Chapter 2 or 19 are not considered to be within the field of  
868 membership of that credit union; and

869 (ii) residents of a city of the third class or town that are added to the field of  
870 membership of a credit union in accordance with Section 7-9-52 are not considered to be  
871 within the field of membership of that credit union unless all residents of the county in which  
872 that city or town are located are included in the field of membership of the credit union.

873 (c) (i) In determining whether two consecutive quarterly reports meeting the  
874 requirements of Subsection (2)(a) have been filed, a credit union shall include quarterly reports  
875 filed by the credit union in accordance with Section 7-1-317 on or after January 1, 2003.

876 (ii) If by including in accordance with this Subsection (2)(c) quarterly reports filed on  
877 or after January 1, 2003 the credit union would become a nonexempt credit union under  
878 Subsection (2)(a) on a day before May 5, 2003, that credit union becomes a nonexempt credit  
879 union on May 5, 2003.

880 (d) (i) Except as provided in Subsection (2)(d)(ii) and beginning with calendar year  
881 2005, for each calendar year the amount of assets required under Subsection (2)(a) for a credit  
882 union to become a nonexempt credit union shall increase or decrease by a percentage equal to  
883 the percentage difference between:

884 (A) the consumer price index for the preceding calendar year; and

885 (B) the consumer price index for calendar year 2003.

886 (ii) Notwithstanding Subsection (2)(d)(i), the amount of assets required under  
887 Subsection (2)(a) may not decrease below \$100,000,000.

888 (iii) For purposes of this Subsection (2)(d), the consumer price index shall be  
889 calculated as provided in Sections (1)(f)(4) and (1)(f)(5), Internal Revenue Code.

890 (iv) On or before January 31 of each year beginning with calendar year 2005, the  
891 commissioner shall notify credit unions organized under this chapter of the amount of assets  
892 required under Subsection (2)(a) as adjusted by the consumer price index in accordance with  
893 this Subsection (2)(d).

894 (v) In determining whether a quarterly report shows that a credit union has assets that  
 895 equal or exceed the amount required by Subsection (2)(a), the amount required under  
 896 Subsection (2)(a) shall be the amount adjusted by the consumer price index in accordance with  
 897 this Subsection (2)(d) for the calendar year in which the quarter occurred.

898 (3) If a credit union becomes a nonexempt credit union under this section, the  
 899 nonexempt credit union is a nonexempt credit union:

900 (a) for as long as the nonexempt credit union is organized under this chapter; and

901 (b) notwithstanding whether after the day on which the nonexempt credit union  
 902 becomes a nonexempt credit union the nonexempt credit union meets the requirements of  
 903 Subsection (2)(a).

904 Section 20. Section 7-9-56 is enacted to read:

905 **7-9-56. Competitive equity assessment.**

906 **h [(1) For purposes of this section, "competitive equity assessment" means an amount**  
 907 **calculated for each fiscal year by:**

908 **(a) multiplying by 30% a credit union's net income for a fiscal year reported on the**  
 909 **credit union's report of condition required by Section 7-1-317; and**

910 **(b) subtracting from the amount calculated under Subsection (1)(a) any federal income**  
 911 **taxes paid by the credit union for that fiscal year.]**

911a **h (1) FOR PURPOSES OF THIS SECTION, "COMPETITIVE EQUITY ASSESSMENT" MEANS AN**  
 911b **AMOUNT CALCULATED FOR EACH FISCAL YEAR BY SUBTRACTING THE AMOUNT OF FEDERAL**  
 911c **INCOME TAXES PAID BY THE CREDIT UNION IN THAT TAXABLE YEAR FROM THE LESSER OF:**

911d **(a) THE AMOUNT CALCULATED TO BE EQUAL TO WHAT THE CREDIT UNION'S FEDERAL**  
 911e **INCOME TAX LIABILITY WOULD BE IF THE CREDIT UNION WERE SUBJECT TO FEDERAL INCOME**  
 911f **TAX IN THE SAME MANNER AS A STATE-CHARTERED BANK; OR**

911g **(b) THE AMOUNT CALCULATED BY MULTIPLYING BY 30% THE AMOUNT EQUAL TO THE**  
 911h **FEDERAL TAXABLE INCOME THE CREDIT UNION WOULD HAVE IF THE CREDIT UNION WERE**  
 911i **SUBJECT TO A FEDERAL INCOME TAX IN THE SAME MANNER AS A STATE-CHARTERED BANK:**

911j **(i) AS DETERMINED ON A SEPARATE RETURN BASIS BEFORE INTERCOMPANY**  
 911k **ELIMINATIONS AS DETERMINED BY THE INTERNAL REVENUE CODE; AND**

911l **(ii) AFTER:**

911m **(A) THE NET OPERATING LOSS DEDUCTION; AND**

911n **(B) SPECIAL DEDUCTIONS FOR DIVIDENDS RECEIVED. h**

912 (2) (a) A credit union may elect to pay a competitive equity assessment by filing a  
 913 notice of election to pay a competitive equity assessment with:

914 (i) the commissioner; and

915 (ii) the State Tax Commission.

916 (b) A notice of election to pay a competitive equity assessment is not considered filed

917 until the later of the day on which the notice of election to pay a competitive equity assessment  
918 is filed with:

919 (i) the commissioner; or

920 (ii) the State Tax Commission.

921 (c) If a credit union files a notice of election to pay a competitive equity assessment,  
922 the credit union shall pay the competitive equity assessment in accordance with Subsection (5).

923 (3) A credit union may not revoke an election to pay a competitive equity assessment  
924 after the day on which the credit union files a notice of election to pay a competitive equity

925 assessment with the commissioner.

926 (4) (a) In accordance with this Subsection (4), for a credit union that files a notice of  
927 election to pay a competitive equity assessment under this title, notwithstanding the other  
928 provisions of this section, the commissioner may issue an order waiving the requirement that  
929 the credit union pay the competitive equity assessment if:

930 (i) the credit union files a request for waiver; and

931 (ii) the credit union is subject to supervisory action under:

932 (A) Chapter 2, Possession of Depository Institution by Commissioner; or

933 (B) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

934 (b) (i) The commissioner may waive payment of the competitive equity assessment for  
935 the period:

936 (A) beginning on the first day of the calendar quarter immediately following the day on  
937 which the request for waiver is filed in accordance with Subsection (4)(a); and

938 (B) ending the last day of the next calendar quarter following the calendar quarter  
939 described in Subsection (4)(b)(i)(A).

940 (ii) The commissioner may waive payment of the competitive equity assessment for the  
941 two calendar quarters immediately following the period described in Subsection (4)(b)(i) if for  
942 those calendar quarters the conditions of Subsection (4)(a) are met.

943 (c) The commissioner shall notify the State Tax Commission of the waiver in writing:

944 (i) by no later than the last day of the calendar quarter described in Subsection

945 (4)(b)(i)(A); and

946 (ii) specifying the two calendar quarters for which payment of the competitive equity  
947 assessment is waived.

948 (d) (i) The following are confidential under Section 7-1-802:

949 (A) a request for waiver filed in accordance with Subsection (4)(a);

950 (B) an order of the commissioner issued under this section waiving the payment of the  
951 competitive equity assessment; and

952 (C) the notice described in Subsection (4)(c), except that the notice may be provided  
953 the State Tax Commission in accordance with Subsection (4)(c).

954 (ii) (A) A person listed in Subsection 59-1-403(1) may not divulge or make known in  
955 any manner any information gained by that person from the notice described in Subsection



956 (4)(c).

957 (B) A person who violates this Subsection (4)(d)(ii) is subject to the penalties  
958 described in Subsection 59-1-403(5).

959 (5) (a) A credit union required to pay the competitive equity assessment under  
960 Subsection (2) shall pay the competitive equity assessment for each fiscal year:

961 (i) to the State Tax Commission; and

962 (ii) beginning on the first day of the month immediately following the day on which the  
963 credit union files the notice of election to pay the competitive equity assessment.

964 (b) This Subsection (5) shall be administered by the State Tax Commission in  
965 accordance with the procedures of Title 59, Chapter 7, Part 5, Procedures and Administration.

966 (6) (a) In addition to any penalties imposed by the State Tax Commission in  
967 accordance with Subsection (5), the commissioner may take supervisory action under Chapter  
968 2, Possession of Depository Institution by Commissioner, against a credit union that is subject  
969 to a penalty imposed by the State Tax Commission for failure to:

970 (i) file an annual return for the competitive equity assessment that is required to be  
971 filed in accordance with Section 59-7-505; or

972 (ii) pay the competitive equity assessment owed for a fiscal year.

973 (b) The State Tax Commission shall notify the commissioner of any credit union that  
974 has filed a notice of election to pay a competitive equity assessment that has failed to take an  
975 action described in Subsection (6)(a).

976 Section 21. Section **7-9-57** is enacted to read:

977 **7-9-57. Waiver of limitations on member-business loans.**

978 (1) If a credit union, including a nonexempt credit union, files a notice of election to  
979 pay a competitive equity assessment in accordance with Section 7-9-56, the credit union is not  
980 subject to the following for a member-business loan extended by the credit union on or after  
981 the day on which the credit union files the notice of election to pay the competitive equity  
982 assessment:

983 (a) Subsection 7-9-5(12)(b);

984 (b) Subsection 7-9-20(7)(b)(ii), except that the credit union may extend a  
985 member-business loan to:

986 (i) a person that is a business entity, only if at least one individual having a controlling

987 interest in that business entity is a member of the credit union at the time the member-business  
988 loan is extended; or

989 (ii) a person who is an individual, only if the individual is a member of the credit union  
990 at the time the member-business loan is extended;

991 (c) Subsection 7-9-20(7)(c); and

992 (d) Subsection 7-9-20(8)(b)(ii).

993 (2) (a) Notwithstanding Subsection (1), a credit union is subject to the more restrictive  
994 of the following in extending a member- business loan:

995 (i) any requirement or limitation imposed on the extension of credit by a bank  
996 chartered under Chapter 3, Banks, including:

997 (A) Section 7-3-19; and

998 (B) any rule made by the commissioner in accordance with Section 7-3-19; or

999 (ii) any requirement or limitation imposed by the National Credit Union

1000 Administration or successor federal deposit insurance agency on a state-chartered credit union  
1001 insured by the National Credit Union Administration or successor federal deposit insurance  
1002 agency.

1003 (b) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah  
1004 Administrative Rulemaking Act, that apply the requirements or limitations described in  
1005 Subsection (2)(a) to a member-business loan extended by a credit union that files a notice of  
1006 election to pay a competitive equity assessment.

1007 (3) This section does not modify any requirement or limitation under this chapter on  
1008 the extension by a credit union of credit that is not a member-business loan.

1009 Section 22. Section **59-1-403** is amended to read:

1010 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

1011 (1) (a) Except as provided in this section, any of the following may not divulge or make  
1012 known in any manner any information gained by that person from any return filed with the  
1013 commission:

1014 (i) a tax commissioner;

1015 (ii) an agent, clerk, or other officer or employee of the commission; or

1016 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
1017 town.

1018 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a  
1019 return filed with the commission is not required to produce the return or evidence of anything  
1020 contained in the return in any action or proceeding in any court, except:

1021 (i) in accordance with judicial order;

1022 (ii) on behalf of the commission in any action or proceeding under:

1023 (A) this title; or

1024 (B) other law under which persons are required to file returns with the commission;

1025 (iii) on behalf of the commission in any action or proceeding to which the commission

1026 is a party; or

1027 (iv) on behalf of any party to any action or proceeding under this title if the report or  
1028 facts shown by the return are directly involved in the action or proceeding.

1029 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
1030 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
1031 pertinent to the action or proceeding.

1032 (2) This section does not prohibit:

1033 (a) a person or that person's duly authorized representative from receiving a copy of  
1034 any return or report filed in connection with that person's own tax;

1035 (b) the publication of statistics as long as the statistics are classified to prevent the  
1036 identification of particular reports or returns; and

1037 (c) the inspection by the attorney general or other legal representative of the state of the  
1038 report or return of any taxpayer:

1039 (i) who brings action to set aside or review a tax based on the report or return;

1040 (ii) against whom an action or proceeding is contemplated or has been instituted under  
1041 this title; or

1042 (iii) against whom the state has an unsatisfied money judgment.

1043 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
1044 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative  
1045 Rulemaking Act, provide for a reciprocal exchange of information with:

1046 (i) the United States Internal Revenue Service; or

1047 (ii) the revenue service of any other state.

1048 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and

1049 corporate franchise tax, the commission may by rule, made in accordance with Title 63,  
1050 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns  
1051 and other written statements with the federal government, any other state, any of the political  
1052 subdivisions of another state, or any political subdivision of this state, except as limited by  
1053 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government  
1054 grant substantially similar privileges to this state.

1055 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
1056 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,  
1057 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
1058 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
1059 due.

1060 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and  
1061 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as  
1062 requested by the executive secretary, any records, returns, or other information filed with the  
1063 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5  
1064 regarding the environmental assurance program participation fee.

1065 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
1066 provide that person sales and purchase volume data reported to the commission on a report,  
1067 return, or other information filed with the commission under:

1068 (i) Chapter 13, Part 2, Motor Fuel; or

1069 (ii) Chapter 13, Part 4, Aviation Fuel.

1070 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,  
1071 as defined in Section 59-22-202, the commission shall report to the manufacturer:

1072 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
1073 manufacturer and reported to the commission for the previous calendar year under Section  
1074 59-14-407; and

1075 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
1076 manufacturer for which a tax refund was granted during the previous calendar year under  
1077 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

1078 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
1079 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited

1080 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

1081 (h) Notwithstanding Subsection (1), the commission may:

1082 (i) provide to the Division of Consumer Protection within the Department of  
1083 Commerce and the attorney general data:

1084 (A) reported to the commission under Section 59-14-212; or

1085 (B) related to a violation under Section 59-14-211; and

1086 (ii) upon request provide to any person data reported to the commission under  
1087 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

1088 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee  
1089 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning  
1090 and Budget, provide to the committee or office the total amount of revenues collected by the  
1091 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the  
1092 committee or office.

1093 (j) Notwithstanding Subsection (1), the commission shall at the request of the  
1094 Legislature provide to the Legislature the total amount of sales or uses exempt under  
1095 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

1096 (k) Notwithstanding Subsection (1), the commission shall make the list required by  
1097 Subsection 59-14-408(3) available for public inspection.

1098 (l) Notwithstanding Subsection (1), the commission shall provide the notice to the  
1099 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

1100 (4) (a) Reports and returns shall be preserved for at least three years.

1101 (b) After the three-year period provided in Subsection (4)(a) the commission may  
1102 destroy a report or return.

1103 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

1104 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,  
1105 the person shall be dismissed from office and be disqualified from holding public office in this  
1106 state for a period of five years thereafter.

1107 (6) This part does not apply to the property tax.

1108 Section 23. Section **59-7-101** is amended to read:

1109 **59-7-101. Definitions.**

1110 As used in this chapter:

1111 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105  
1112 and 59-7-106.

1113 (2) (a) "Affiliated group" means one or more chains of corporations that are connected  
1114 through stock ownership with a common parent corporation that meet the following  
1115 requirements:

1116 (i) at least 80% of the stock of each of the corporations in the group, excluding the  
1117 common parent corporation, is owned by one or more of the other corporations in the group;  
1118 and

1119 (ii) the common parent directly owns at least 80% of the stock of at least one of the  
1120 corporations in the group.

1121 (b) "Affiliated group" does not include corporations that are qualified to do business  
1122 but are not otherwise doing business in this state.

1123 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which  
1124 is limited and preferred as to dividends.

1125 (3) "Apportionable income" means adjusted income less nonbusiness income net of  
1126 related expenses, to the extent included in adjusted income.

1127 (4) "Apportioned income" means apportionable income multiplied by the  
1128 apportionment fraction as determined in Section 59-7-311.

1129 (5) "Business income" means income as defined in Section 59-7-302.

1130 (6) "Corporate return" or "return" includes a combined report.

1131 (7) (a) "Common ownership" means the direct or indirect control or ownership of more  
1132 than 50% of the outstanding voting stock of:

1133 (i) a parent-subsiary controlled group as defined in Section 1563, Internal Revenue  
1134 Code, except that 50% shall be substituted for 80%;

1135 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue  
1136 Code, except that 50% shall be substituted for 80%; or

1137 (iii) three or more corporations each of which is a member of a group of corporations  
1138 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

1139 (A) a common parent corporation included in a group of corporations described in  
1140 Subsection (2)(a)(i); and

1141 (B) included in a group of corporations described in Subsection (2)(a)(ii).

- 1142 (b) Ownership of outstanding voting stock shall be determined by Section 1563,  
1143 Internal Revenue Code.
- 1144 (8) "Corporation" includes:
- 1145 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue  
1146 Code; and
- 1147 (b) other organizations that are taxed as corporations for federal income tax purposes  
1148 under the Internal Revenue Code.
- 1149 (9) "Dividend" means any distribution, including money or other type of property,  
1150 made by a corporation to its shareholders out of its earnings or profits accumulated after  
1151 December 31, 1930.
- 1152 (10) (a) "Doing business" includes any transaction in the course of its business by a  
1153 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in  
1154 this state.
- 1155 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
- 1156 (i) the right to do business through incorporation or qualification;
- 1157 (ii) the owning, renting, or leasing of real or personal property within this state; and
- 1158 (iii) the participation in joint ventures, working and operating agreements, the  
1159 performance of which takes place in this state.
- 1160 (11) "Domestic corporation" means a corporation that is incorporated or organized  
1161 under the laws of this state.
- 1162 (12) (a) "Farmers' cooperative" means an association, corporation, or other  
1163 organization that is:
- 1164 (i) (A) an association, corporation, or other organization of:
- 1165 (I) farmers; or
- 1166 (II) fruit growers; or
- 1167 (B) an association, corporation, or other organization that is similar to an association,  
1168 corporation, or organization described in Subsection (12)(a)(i)(A); and
- 1169 (ii) organized and operated on a cooperative basis to:
- 1170 (A) (I) market the products of members of the cooperative or the products of other  
1171 producers; and
- 1172 (II) return to the members of the cooperative or other producers the proceeds of sales

1173 less necessary marketing expenses on the basis of the quantity of the products of a member or  
1174 producer or the value of the products of a member or producer; or

1175 (B) (I) purchase supplies and equipment for the use of members of the cooperative or  
1176 other persons; and

1177 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at  
1178 actual costs plus necessary expenses to the members of the cooperative or other persons.

1179 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the  
1180 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative  
1181 Rulemaking Act, shall define:

1182 (A) the terms:

1183 (I) "member"; and

1184 (II) "producer"; and

1185 (B) what constitutes an association, corporation, or other organization that is similar to  
1186 an association, corporation, or organization described in Subsection (12)(a)(i)(A).

1187 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing  
1188 requirements under federal law for a farmers' cooperative.

1189 (13) "Foreign corporation" means a corporation that is not incorporated or organized  
1190 under the laws of this state.

1191 (14) (a) "Foreign operating company" means a corporation that:

1192 (i) is incorporated in the United States; and

1193 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is  
1194 conducted outside the United States.

1195 (b) "Foreign operating company" does not include a corporation that qualifies for the  
1196 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

1197 (15) "Foreign sales corporation" means a corporation as defined in Section 922,  
1198 Internal Revenue Code.

1199 (16) "Income" includes losses.

1200 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective  
1201 during the year in which Utah taxable income is determined.

1202 (18) "Nonbusiness income" means income as defined in Section 59-7-302.

1203 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the



1204 last day of the taxable year of the S corporation, is:

1205 (a) an individual not domiciled in Utah; or

1206 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

1207 (20) "Related expenses" means:

1208 (a) expenses directly attributable to nonbusiness income; and

1209 (b) the portion of interest or other expense indirectly attributable to both nonbusiness  
1210 and business income which bears the same ratio to the aggregate amount of such interest or  
1211 other expense, determined without regard to this Subsection (20), as the average amount of the  
1212 asset producing the nonbusiness income bears to the average amount of all assets of the  
1213 taxpayer within the taxable year.

1214 (21) "Resident shareholder" means any shareholder of an S corporation who is not a  
1215 nonresident shareholder.

1216 (22) "S corporation" means a small business corporation as defined in Section 1361,  
1217 Internal Revenue Code.

1218 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
1219 Section 168, Internal Revenue Code.

1220 (24) "State of the United States" includes any of the 50 states or the District of  
1221 Columbia and "United States" includes the 50 states and the District of Columbia.

1222 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such  
1223 calendar year upon the basis of which the adjusted income is computed.

1224 (b) In the case of a return made for a fractional part of a year under this chapter or  
1225 under rules prescribed by the commission, "taxable year" includes the period for which such  
1226 return is made.

1227 (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

1228 (27) "Threshold level of business activity" means business activity in the United States  
1229 equal to or greater than 20% of the corporation's total business activity as determined under  
1230 Section 59-7-401.

1231 (28) Except as provided in Section 59-7-102, "unadjusted income" means federal  
1232 taxable income as determined on a separate return basis before intercompany eliminations as  
1233 determined by the Internal Revenue Code, before the net operating loss deduction and special  
1234 deductions for dividends received.

1235 (29) (a) "Unitary group" means a group of corporations that:

1236 (i) are related through common ownership; and

1237 (ii) by a preponderance of the evidence as determined by a court of competent

1238 jurisdiction or the commission, are economically interdependent with one another as

1239 demonstrated by the following factors:

1240 (A) centralized management;

1241 (B) functional integration;

1242 (C) economies of scale.

1243 (b) "Unitary group" does not include S corporations.

1244 (30) "Utah net loss" means the current year Utah taxable income before Utah net loss

1245 deduction, if determined to be less than zero.

1246 (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable

1247 years that may be carried back or carried forward to the current taxable year in accordance with

1248 Section 59-7-110.

1249 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction

1250 less Utah net loss deduction.

1251 (b) "Utah taxable income" includes income from tangible or intangible property located

1252 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign

1253 commerce.

1254 (33) "Utah taxable income before net loss deduction" means apportioned income plus

1255 nonbusiness income allocable to Utah net of related expenses.

1256 (34) (a) "Water's edge combined report" means a report combining the income and

1257 activities of:

1258 (i) all members of a unitary group that are:

1259 (A) corporations organized or incorporated in the United States, including those

1260 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section

1261 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

1262 (B) corporations organized or incorporated outside of the United States meeting the

1263 threshold level of business activity; and

1264 (ii) an affiliated group electing to file a water's edge combined report under Subsection

1265 59-7-402(2).

1266 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto  
1267 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a  
1268 unitary group.

1269 (35) "Worldwide combined report" means the combination of the income and activities  
1270 of all members of a unitary group irrespective of the country in which the corporations are  
1271 incorporated or conduct business activity.

1272 Section 24. Section **59-7-102** is amended to read:

1273 **59-7-102. Exemptions.**

1274 (1) Except as provided in this section, the following are exempt from this chapter:

1275 (a) an organization exempt under Section 501, Internal Revenue Code;

1276 (b) an organization exempt under Section 528, Internal Revenue Code;

1277 (c) an insurance company that is otherwise taxed on the insurance company's premiums  
1278 under Chapter 9, Taxation of Admitted Insurers;

1279 (d) a building authority as defined in Section 17A-3-902;

1280 (e) a farmers' cooperative; or

1281 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an  
1282 ownership interest in:

1283 (i) a project, as defined in Section 11-13-103; or

1284 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1285 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts  
1286 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a  
1287 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to  
1288 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1289 (a) that person's ownership of tangible personal property located at the premises of a  
1290 printer's facility in this state with which the person has contracted for printing; or

1291 (b) the activities of the person's employees or agents who are:

1292 (i) located solely at the premises of a printer's facility; and

1293 (ii) performing services:

1294 (A) related to:

1295 (I) quality control;

1296 (II) distribution; or

1297 (III) printing services; and  
1298 (B) performed by the printer's facility in this state with which the person has contracted  
1299 for printing.

1300 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'  
1301 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part  
1302 8, Unrelated Business Income, to the extent provided in Part 8.

1303 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization  
1304 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal  
1305 Revenue Code, the organization's income is also taxable under this chapter.

1306 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in  
1307 Section 7-9-3, is not exempt from this chapter beginning on the first day of the month  
1308 immediately following the day on which the nonexempt credit union becomes a nonexempt  
1309 credit union under Section 7-9-55.

1310 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit  
1311 union that is subject to this chapter in accordance with Subsection (5)(a) is an amount equal to  
1312 the federal taxable income the nonexempt credit union would have if the nonexempt credit  
1313 union were subject to a federal income tax **h** IN THE SAME MANNER AS A STATE-CHARTERED  
1313a BANK **h** :

1314 (i) determined on a separate return basis before intercompany eliminations as  
1315 determined by the Internal Revenue Code; and

1316 (ii) before:

1317 (A) the net operating loss deduction; and

1318 (B) special deductions for dividends received.

1319 Section 25. **Repealer.**

1320 This act repeals:

1321 Section 7-9-53, **Grandfathering.**

1322 Section 7-9-54, **Electing to terminate grandfathering.**