

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 creates a program under which a credit union may elect to pay a 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:

7-1-403, as last amended by Chapter 1, Laws of Utah 1986, Fourth Special Session

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

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- 26 **7-9-6**, as last amended by Chapter 329, Laws of Utah 1999
- 27 **7-9-11**, as last amended by Chapter 329, Laws of Utah 1999
- 28 **7-9-12**, as last amended by Chapter 329, Laws of Utah 1999
- 29 **7-9-16**, as last amended by Chapter 329, Laws of Utah 1999
- 30 **7-9-20**, as last amended by Chapter 329, Laws of Utah 1999
- 31 **7-9-26**, as last amended by Chapter 182, Laws of Utah 1996
- 32 **7-9-34**, as last amended by Chapter 178, Laws of Utah 1994
- 33 **7-9-37**, as last amended by Chapter 329, Laws of Utah 1999
- 34 **7-9-39**, as last amended by Chapter 329, Laws of Utah 1999
- 35 **7-9-39.5**, as enacted by Chapter 329, Laws of Utah 1999
- 36 **7-9-46**, as last amended by Chapter 49, Laws of Utah 1995
- 37 **7-9-51**, as enacted by Chapter 329, Laws of Utah 1999
- 38 **7-9-52**, as enacted by Chapter 329, Laws of Utah 1999
- 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 **7-1-403** is amended to read:

50 **7-1-403. Funds and balances paid to treasurer -- Separate account -- Use of**
51 **funds.**

52 ~~[Unexpended]~~ (1) Except as provided in Section 7-9-56, unexpended balances and all
53 funds accruing to the department shall be:

- 54 (a) deposited by the commissioner with the state treasurer monthly; and
- 55 (b) constitute a separate account within the General Fund.

56 (2) No part of the separate account described in Subsection (1) may revert to the

57 General Fund except an amount as required by law to be transferred for general government
58 and administrative costs.

59 (3) With the approval of the director of the Division of Finance, the commissioner may
60 withdraw sums from the separate account to:

61 (a) pay costs and expenses of administration incurred in proceedings under Title 7,
62 Chapters 1, 2, and 19[;]; or [tø]

63 (b) use in connection with the rehabilitation, reorganization, or liquidation of an
64 institution under the jurisdiction of the department.

65 Section 2. Section **7-1-708** is amended to read:

66 **7-1-708. Establishing branches and relocating offices -- Application and**
67 **procedure for approval -- Limitations on nonexempt credit unions.**

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

72 (2) [~~Approval~~] The approval of the commissioner required by Subsection (1) may be
73 obtained by:

74 (a) filing an application with the department in a form the commissioner prescribes;
75 and

76 (b) supplementing the application with information the commissioner considers
77 material to determining whether to approve the application.

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

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

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

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

86 (5) [~~The~~] An application, any supplemental information furnished by the applicant, and
87 the findings and recommendations of the supervisor may be inspected by any person at the

88 department's office, except those portions of the application the commissioner declares to be
89 confidential to prevent a clearly unwarranted invasion of privacy, pursuant to the applicant's
90 request.

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

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

94 (b) disapprove an application.

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

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

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

102 (ii) for good cause shown.

103 (8) An out-of-state depository institution with a branch in Utah is not subject to the
104 requirements of this section if the office or branch to be established or relocated is located
105 outside of Utah.

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

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

113 (i) a loan production office; or

114 (ii) any other office or facility that:

115 (A) is owned or operated by:

116 (I) the nonexempt credit union; or

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

119 (B) is open to the public; and

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

122 Section 3. Section **7-7-10** is amended to read:

123 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

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

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

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

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

133 (3) In the determination of all questions requiring action by the members, each member
134 shall be entitled to cast:

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

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

139 (4) [~~At~~] (a) (i) Subject to Subsection (4)(a)(ii), at any meeting of the members, voting
140 may be:

141 (A) in person; or

142 (B) by proxy[~~; but no~~].

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

146 (b) Every proxy shall:

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

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

150 (iii) continue in force from year to year;

151 (A) when filed with the secretary;

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

153 (C) until;

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

155 (II) superseded by subsequent proxies.

156 (5) (a) At an annual meeting or at any special meeting of the members, any number of

157 members present in person or by proxy eligible to be voted constitutes a quorum.

158 (b) A majority of all votes cast at any meeting of members shall determine any

159 question unless this chapter specifically provides otherwise.

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

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

162 (i) state;

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

164 (B) the place of the meeting[;]; and

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

166 (ii) (A) be published;

167 (I) once a week for two consecutive calendar weeks (in each instance, on any day of the

168 week) before the date on which the special meeting shall convene[;]; and

169 (II) in a newspaper of general circulation in the county in which the home office of the

170 association is located~~[- In addition to publication of the notice, a copy of the notice shall]; and~~

171 (B) be posted in a conspicuous place in all offices of the association during the 30 days

172 immediately preceding the date on which the special meeting convenes~~[- provided, however,~~

173 ~~that].~~

174 (c) No notice need be given of a meeting if all the members entitled to vote, vote in

175 favor of an action at ~~[any]~~ the meeting of the members~~[- no notice need be given].~~

Section 4. Section 7-9-2 is amended to read:

7-9-2. Description of credit unions.

178 (1) A credit union is a cooperative, non-profit association, incorporated under this

179 chapter to:

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

181 (b) create sources of credit at fair and reasonable rates of interest[;]; and [to]
182 (c) provide an opportunity for [its] the credit union's members to use and control their
183 resources on a democratic basis in order to improve their economic and social condition.

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

188 Section 5. Section 7-9-3 is amended to read:

189 **7-9-3. Definitions.**

190 As used in this chapter:

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

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

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

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

195 (A) an identifiable interest;

196 (B) an identifiable purpose;

197 [~~(ii) (C) a specific profession; or~~]

198 [~~(iii) (D) a specific occupation; or~~]

199 [~~(iv) formal association with an identifiable purpose; or~~]

200 [~~(b) is~~] (ii) are employed by a common employer.

201 (b) "Association" does not include a group of persons that is:

202 (i) identified or created primarily on the basis of a relationship between any person

203 and:

204 (A) a consumer;

205 (B) a customer; or

206 (C) a client; or

207 (ii) created primarily for the purpose of expanding the membership in a credit union.

208 (2) "Capital and surplus" means:

209 (a) shares;

210 (b) deposits;

211 (c) reserves; and

212 (d) undivided earnings.

213 (3) "Corporate credit union" means any credit union organized pursuant to any state or
214 federal act for the purpose of serving other credit unions.

215 (4) "Credit union service organization" means a service organization that provides
216 services that are:

217 (a) subject to Subsection (4)(a)(i), permitted by rule made by the commissioner in
218 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

219 (b) (i) except for the extension of credit by the service organization, limited primarily
220 to:

221 (A) credit unions that hold an ownership interest in the service organization;

222 (B) members of credit unions that hold an ownership interest in the service
223 organization; or

224 (C) members of credit unions that contract with the service organization; and

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

227 [~~4~~] (5) "Deposits" means that portion of the capital paid into the credit union by
228 members on which a specified rate of interest will be paid.

229 (6) "~~limited field~~ Field of membership" means persons designated as eligible for
230 credit union membership in accordance with:

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

232 (b) the bylaws of the credit union.

233 [~~5~~] (7) "Immediate family" means parents, spouse, surviving spouse, children, and
234 siblings of the member.

235 [~~7~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,
236 the proceeds of which will be used for:

237 (i) a commercial purpose;

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

239 (iii) an agricultural purpose.

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

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

243 (ii) that is fully secured by:
 244 (A) shares or deposits in the credit union making the extension of credit; or
 245 (B) deposits in other financial institutions;
 246 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an
 247 advance commitment to purchase in full by, an agency of:

248 (A) the federal government;

249 (B) a state; or

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

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

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

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

256 ~~[(9)]~~ (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts
 257 from which owners are permitted to make withdrawals by negotiable or transferable
 258 instruments or other orders for the purpose of making transfers to other persons or to the
 259 owner.

260 ~~[(10)]~~ (11) "Shares" means that portion of the capital paid into the credit union by
 261 members on which dividends may be paid.

262 Section 6. Section **7-9-5** is amended to read:

263 **7-9-5. Powers of credit unions.**

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

266 (1) make contracts;

267 (2) sue and be sued;

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

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

- 274 (5) incur and pay necessary and incidental operating expenses;
- 275 (6) require an entrance or membership fee;
- 276 (7) receive the funds of its members in payment for:
- 277 (a) shares;
- 278 (b) share certificates;
- 279 (c) deposits;
- 280 (d) deposit certificates;
- 281 (e) share drafts;
- 282 (f) NOW accounts; and
- 283 (g) other instruments;
- 284 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
- 285 party with prior authorization in writing, including, but not limited to, drafts drawn on the
- 286 credit union for payment to the member or any third party, in accordance with the procedures
- 287 established by the board of directors, including, but not limited to, drafts, third-party
- 288 instruments, and other transaction instruments, as provided in the bylaws;
- 289 (9) charge fees for its services;
- 290 (10) extend credit to its members, at rates established in accordance with the bylaws or
- 291 by the board of directors;
- 292 (11) extend credit secured by real estate;
- 293 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan
- 294 participation arrangements [with other credit unions, credit union organizations, or financial
- 295 organizations], in accordance with written policies of the board of directors[-if] with one or
- 296 more:
- 297 (i) other credit unions;
- 298 (ii) credit union service organizations; or
- 299 (iii) other financial organizations; and
- 300 (b) except as provided in Section 7-9-57, make co-lending arrangements, including
- 301 loan participation arrangements, in accordance with Subsection (12)(a) subject to the
- 302 following:
- 303 (i) the credit union or credit union service organization that originates a loan for which
- 304 [participation] co-lending arrangements are made [retains] shall retain an interest of at least

- 305 10% of the loan;
- 306 (ii) on or after May 5, 2003, the originating credit union or credit union service
307 organization may sell to a credit union an interest in a co-lending arrangement that involves a
308 member-business loan only if the person receiving the member-business loan is a member of
309 the credit union to which the interest is sold; and
- 310 (iii) on or after May 5, 2003, the originating credit union or credit union service
311 organization may sell to a credit union service organization an interest in a co-lending
312 arrangement that involves a member-business loan only if the person receiving the
313 member-business loan is a member of a credit union that holds an interest in the credit union
314 service organization to which the interest is sold;
- 315 (13) sell and pledge eligible obligations in accordance with written policies of the
316 board of directors;
- 317 (14) engage in activities and programs of the federal government or this state or any
318 agency or political subdivision of the state, when approved by the board of directors and not
319 inconsistent with this chapter;
- 320 (15) act as fiscal agent for and receive payments on shares and deposits from the
321 federal government, this state, or its agencies or political subdivisions not inconsistent with the
322 laws of this state;
- 323 (16) borrow money and issue evidence of indebtedness for a loan or loans for
324 temporary purposes in the usual course of its operations;
- 325 (17) discount and sell notes and obligations;
- 326 (18) sell all or any portion of its assets to another credit union or purchase all or any
327 portion of the assets of another credit union;
- 328 (19) invest funds as provided in this title and in its bylaws;
- 329 (20) maintain deposits in insured depository institutions as provided in this title and in
330 its bylaws;
- 331 (21) (a) hold membership in corporate credit unions organized under this chapter or
332 under other state or federal statutes; and
- 333 (b) hold membership or equity interest in associations and organizations of credit
334 unions, including credit union service organizations;
- 335 (22) declare and pay dividends on shares, contract for and pay interest on deposits, and

336 pay refunds of interest on loans as provided in this title and in its bylaws;

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

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

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

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

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

352 (28) reimburse directors and committee members for reasonable and necessary
353 expenses incurred in the performance of their duties;

354 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of
355 credit unions or credit union members by automated or electronic means and hold membership
356 in entities established to promote and effectuate these systems, if:

357 (a) the participation is not inconsistent with the law and rules of the department; and

358 (b) any credit union participating in any system notifies the department as provided by
359 law;

360 (30) issue credit cards and debit cards to allow members to obtain access to their
361 shares, deposits, and extensions of credit;

362 (31) provide any act necessary to obtain and maintain membership in the credit union;

363 (32) exercise incidental powers necessary to carry out the purpose for which a credit
364 union is organized;

365 (33) undertake other activities relating to its purpose as its bylaws may provide;

366 (34) engage in other activities, exercise other powers, and enjoy other rights,

367 privileges, benefits, and immunities authorized by rules of the commissioner;

368 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement
369 accounts, credit union employee pension plans, and other employee benefit programs; and

370 (36) advertise to the general public the products and services offered by the credit
371 union if the advertisement prominently discloses that to use the products or services of the
372 credit union a person is required to:

373 (a) be eligible for membership in the credit union; and

374 (b) become a member of the credit union.

375 Section 7. Section 7-9-6 is amended to read:

376 **7-9-6. Formation of corporation to conduct credit union -- Approval of**
377 **commissioner.**

378 (1) (a) Ten or more incorporators belonging to the same group of 200 persons or more
379 having a [limited] field of membership may, with the approval of the commissioner, form a
380 corporation to conduct a credit union under:

381 (i) this chapter;

382 (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act; and

383 (iii) Chapter 1, General Provisions.

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

386 (i) the formation of the corporation; and

387 (ii) the duties and obligations of:

388 (A) the corporation;

389 (B) the corporation's officers; and

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

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

393 (a) the proposed [limited] field of membership is favorable to the success of the credit
394 union;

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

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

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

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

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

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

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

409 Section 8. Section **7-9-11** is amended to read:

410 **7-9-11. Bylaws and amendments to be approved.**

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

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

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

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

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

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

427 **7-9-12. Contents of bylaws.**

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

- 429 (1) the name of the credit union;
- 430 (2) the purpose for which [it] the credit union was formed;
- 431 (3) a [~~limited~~] field of membership of the credit union that complies with Section
- 432 7-9-51 [~~or 7-9-53~~];
- 433 (4) the number of directors and procedures for their election;
- 434 (5) the term of directors;
- 435 (6) whether a credit manager, credit committee, or combination of both shall be
- 436 responsible for credit functions of the credit union;
- 437 (7) the duties of the officers;
- 438 (8) the time of year of the annual meeting of members;
- 439 (9) the manner in which members shall be notified of meetings;
- 440 (10) the number of members which shall constitute a quorum at meetings;
- 441 (11) the manner of amending;
- 442 (12) the manner in which officers may act as surety; and
- 443 (13) such other matters, rules, and regulations as the board of directors consider
- 444 necessary.

445 Section 10. Section **7-9-16** is amended to read:

446 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
447 **of membership.**

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

460 in any financial loss to the credit union.

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

462 Section 11. Section **7-9-20** is amended to read:

463 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

466 (2) The bylaws may provide balloting by:

467 (a) mail;

468 (b) ballot box; or

469 (c) both mail and ballot box.

470 (3) Voting may not be by proxy.

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

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

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

476 (a) act upon applications for membership;

477 (b) act upon expulsion of members;

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

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

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

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

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

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

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

487 (j) declare dividends and their amount;

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

490 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to

491 any one member, up to the limitations described in ~~[Subsection]~~ Subsections (7) and (8).

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

494 (i) except as provided in:

495 (A) Subsection ~~(7)(d) through (7)(f); and~~ (8); or

496 (B) Section 7-9-57; and

497 (ii) except that the board of directors may:

498 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or

499 (B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the
500 credit union for more than six months before the date a member-business loan is extended.

501 (b) (i) A credit union may not extend credit that is not a member-business loan to a
502 member if as a result of that extension of credit the total credit that is not a member-business
503 loan that the credit union has issued to that member exceeds at any one time:

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

505 (I) \$1,000; or

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

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

508 (I) \$25,000;

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

510 (III) 25% of the regular reserve.

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

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

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

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

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

522 (II) \$250,000.

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

527 (A) the actual undivided earnings; and

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

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

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

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

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

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

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

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

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

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

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

552 (B) by:

553 (I) a credit union service organization; or

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

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

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

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

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

566 (I) the federal government;

567 (II) a state; or

568 (III) a political subdivision of the state.

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

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

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

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

578 ~~[(8)]~~ (9) As provided in this chapter or in the credit union bylaws, the board of
579 directors:

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

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

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

- 584 (ii) a credit manager in lieu of a credit committee;
- 585 (c) shall appoint a president to serve as general manager;
- 586 (d) shall have an executive committee;
- 587 (e) may appoint an investment officer;
- 588 (f) shall elect a secretary;
- 589 (g) may appoint other officers and committees that it considers necessary;
- 590 (h) shall establish written credit policies, loan security requirements, loan investment,
- 591 personnel, and collection policies; and
- 592 (i) on or before January 31 of each year, shall provide for:
- 593 (i) share insurance for the shares and deposits of the credit union from the National
- 594 Credit Union Administration or successor federal agency; or
- 595 (ii) security expressly pledged for the payment of the shares and deposits in accordance
- 596 with Section 7-9-45.
- 597 ~~[(9)]~~ (10) A person may not be a member of more than one committee except as
- 598 otherwise provided in this chapter or in the credit union bylaws.
- 599 ~~[(10)]~~ (11) The president and secretary may not be the same person.
- 600 Section 12. Section **7-9-26** is amended to read:
- 601 **7-9-26. Loans to members -- Investment officers -- Investments.**
- 602 (1) ~~[The]~~ Subject to Subsections 7-9-20(7) and (8), capital and surplus of the credit
- 603 union shall be loaned to the members for the purposes and upon the endorsements or security
- 604 and the terms as the bylaws provide.
- 605 (2) Within 30 days after the annual meeting of the members the board of directors may
- 606 appoint one or more investment officers who shall have responsibilities for the credit union
- 607 investment portfolio based upon policy established by the board of directors and as provided in
- 608 this chapter or in the bylaws.
- 609 (3) The credit union by action of its board of directors may invest its funds as follows:
- 610 (a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed
- 611 as to principal and interest by, the United States of America or any of its agencies, or in any
- 612 trusts established by investing directly or collectively in these instruments;
- 613 (b) in obligations of any state of the United States, the District of Columbia, the
- 614 Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their

615 political subdivisions;

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

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

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

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

626 Section 13. Section **7-9-34** is amended to read:

627 **7-9-34. Tax exemption of credit unions.**

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

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

633 [~~(3) For purposes of the corporate tax, credit unions shall be governed by Section~~
634 ~~59-7-102.]~~

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

637 (2) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title
638 59, Chapter 7, Corporate Franchise and Income Taxes, beginning on the first day of the month
639 immediately following the day on which the credit union becomes a nonexempt credit union
640 under Section 7-9-55.

641 Section 14. Section **7-9-37** is amended to read:

642 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**
643 **acquired credit union.**

644 Members of a dissolved, merged, consolidated, transferred, or acquired credit union
645 may become members of another existing credit union with a related [~~limited~~] field of

646 membership as approved by the commissioner.

647 Section 15. Section **7-9-39** is amended to read:

648 **7-9-39. Voluntary merger.**

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

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

653 (b) the commissioner approves the merger plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

705 ~~[(i) if the credit union does not have a limited field of membership under Subsection~~
706 ~~7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of~~
707 ~~branches as of the date the merger is effective; or]~~

708 ~~[(ii) if the credit union has a limited field of membership under Subsection~~
709 ~~7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union~~
710 ~~under Section 7-9-53;]~~

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

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

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

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

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

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

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

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

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

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

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

730 ~~[(B) resides in the domicile-county of the surviving credit union, as defined in Section~~
731 ~~7-9-53;]~~

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

735 (5) Except as provided in Section 7-9-39.5, the commissioner may not approve a
736 merger plan under which the surviving credit union is a nonexempt credit union unless the
737 merger plan requires that the surviving credit union file a notice of election to pay a
738 competitive equity assessment:

- 739 (a) in accordance with Section 7-9-56; and
740 (b) on or before the day on which the merger is effective.

741 Section 16. Section **7-9-39.5** is amended to read:

742 **7-9-39.5. Supervisory merger.**

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

747 Section 17. Section **7-9-46** is amended to read:

748 **7-9-46. Out-of-state credit unions -- Authorization to do business in state --**
749 **Supervision -- Examination.**

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

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

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

755 (b) the branch has been authorized by:

756 (i) the department and the chartering authority of the credit union's home state in the
757 case of a state chartered credit union; or

758 (ii) the National Credit Union Administration or successor agency in the case of a
759 federally chartered credit union[~~;~~]; and

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

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

766 Section 18. Section **7-9-51** is amended to read:

767 **7-9-51. Field of membership.**

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

- 770 (a) the immediate family of a member of the credit union;
 771 (b) the employees of the credit union;
 772 (c) residents of [~~a single county~~] one or more counties; [~~and~~]
 773 (d) one or more associations[~~;~~]; and
 774 (e) if approved by the commissioner in accordance with Subsection 7-9-52(5),

775 residents of:

- 776 (i) a city of the third class as classified in Section 10-2-301; or
 777 (ii) a town as classified in Section 10-2-301.

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

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

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

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

785 [~~(c) is permitted by the commissioner after a merger in accordance with Section~~
 786 ~~7-9-39.5:]~~

787 [~~(4) If a credit union includes the residents of one county in its limited field of~~
 788 ~~membership, the credit union may not change its limited field of membership to include a~~
 789 ~~different county than the county that is first included in the limited field of membership of the~~
 790 ~~credit union.]~~

791 Section 19. Section **7-9-52** is amended to read:

792 **7-9-52. Expansion of a field of membership.**

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

- 796 (a) residents of [~~one~~] a county; [~~or~~]
 797 (b) an association consisting of 50 or more persons[~~;~~]; or
 798 (c) subject to the requirements of Subsection (5), residents of:
 799 (i) a city of the third class as classified in Section 10-2-301; or
 800 (ii) a town as classified in Section 10-2-301.

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

802 (a) give notice of the request in the manner and to the extent the commissioner

803 considers appropriate to institutions subject to the jurisdiction of the department that:

804 (i) are located in the county, if the ~~[limited]~~ field of membership is being expanded to

805 include residents of a county; ~~[or]~~

806 (ii) serve or may serve the association described in Subsection (1)(b), if that association

807 is being added to the ~~[limited]~~ field of membership; ~~[and]~~ or

808 (iii) are located in the county in which a city or town described in Subsection (1)(c) is

809 located, if the field of membership is being expanded to include residents of the city or town;

810 and

811 (b) cause a supervisor to examine and submit written findings and recommendations to

812 the commissioner as to:

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

814 (ii) whether the credit union has the financial capacity to serve the financial needs of

815 the expanded ~~[limited]~~ field of membership in a safe and sound manner;

816 (iii) whether the credit union has the managerial expertise to serve the financial needs

817 of the expanded ~~[limited]~~ field of membership in a safe and sound manner;

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

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

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

821 (3) The commissioner may approve the amendment to the bylaws described in

822 Subsection (1) if the commissioner:

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

824 (b) received the written findings and recommendations of the supervisor under

825 Subsection (2)(b); and

826 (c) finds that:

827 (i) the credit union is adequately capitalized;

828 (ii) the credit union has the financial capacity to serve the financial needs of the

829 expanded ~~[limited]~~ field of membership in a safe and sound manner;

830 (iii) the credit union has the managerial expertise to serve the financial needs of the

831 expanded ~~[limited]~~ field of membership in a safe and sound manner; and

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

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

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

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

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

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

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

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

854 Section 20. Section **7-9-55** is enacted to read:

855 **7-9-55. Nonexempt credit unions.**

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

858 (a) that:

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

860 (ii) are established in whole or in part with assets from a credit union that as of May 5,
861 2003, has a field of membership that includes all residents of two or more counties; and

862 (b) if:

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

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

867 (A) a corporate credit union;

868 (B) a trade association; or

869 (C) an association representing credit unions generally.

870 (2) (a) Subject to Subsection (2)(c), a credit union organized under this chapter is a
871 nonexempt credit union under this section on the day on which:

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

873 (A) the credit union files a quarterly report in accordance with Section 7-1-317 if the
874 quarterly report is the second consecutive quarterly report that shows that the assets of the
875 credit union equal or exceed \$100,000,000; and

876 (B) the credit union has a field of membership that includes all residents of two or
877 more counties; or

878 (ii) the related credit union files a quarterly report in accordance with Section 7-1-317
879 if the quarterly report is the second consecutive quarterly report that shows assets that if
880 aggregated with the assets of all related credit unions equal or exceed \$100,000,000.

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

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

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

889 (c) (i) In determining whether two consecutive quarterly reports meeting the
890 requirements of Subsection (2)(a) have been filed, a credit union shall include the last two
891 quarterly reports filed by the credit union in accordance with Section 7-1-317 as of May 5,
892 2003.

893 (ii) If by including in accordance with this Subsection (2)(c) the last two quarterly

894 reports filed with the commissioner as of May 5, 2003 the credit union would become a
895 nonexempt credit union under Subsection (2)(a) on a day before May 5, 2003, that credit union
896 becomes a nonexempt credit union on May 5, 2003.

897 (d) (i) Except as provided in Subsection (2)(d)(ii) and beginning with calendar year
898 2005, for each calendar year the amount of assets required under Subsection (2)(a) for a credit
899 union to become a nonexempt credit union shall increase or decrease by a percentage equal to
900 the percentage difference between:

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

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

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

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

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

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

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

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

918 (b) notwithstanding whether after the day on which the nonexempt credit union
919 becomes a nonexempt credit union the nonexempt credit union meets the requirements of
920 Subsection (2)(a).

921 Section 21. Section **7-9-56** is enacted to read:

922 **7-9-56. Competitive equity assessment.**

923 (1) For purposes of this section, "competitive equity assessment" means an amount
924 calculated for each fiscal year by:

- 925 (a) multiplying by 30% a credit union's net income for a fiscal year reported on the
926 credit union's report of condition required by Section 7-1-317; and
- 927 (b) subtracting from the amount calculated under Subsection (1)(a) any federal income
928 taxes paid by the credit union for that fiscal year.
- 929 (2) A credit union may elect to pay a competitive equity assessment by filing with the
930 commissioner a notice of election to pay a competitive equity assessment.
- 931 (3) If a credit union files a notice of election to pay a competitive equity assessment,
932 the credit union shall pay the competitive equity assessment:
- 933 (a) to the commissioner;
- 934 (b) for each fiscal year beginning with the fiscal year in which the notice of election to
935 pay a competitive equity assessment is filed with the commissioner; and
- 936 (c) by no later than the March 31 following the fiscal year for which the competitive
937 equity assessment is being paid.
- 938 (4) A credit union may not revoke an election to pay a competitive equity assessment
939 after the day on which the credit union files a notice of election to pay a competitive equity
940 assessment with the commissioner.
- 941 (5) Amounts collected under this section shall be deposited into the Uniform School
942 Fund.
- 943 (6) A credit union that files a notice of election to pay a competitive equity assessment
944 that fails to pay the competitive equity assessment is subject to Subsection 7-1-402(6).
- 945 (7) (a) For a credit union that files a notice of election to pay a competitive equity
946 assessment under this title, notwithstanding the other provisions of this section, the
947 commission may waive the requirement that the credit union pay the competitive equity
948 assessment for a fiscal year if:
- 949 (i) the credit union files a request for waiver before the day on which the competitive
950 equity assessment is due; and
- 951 (ii) the credit union is subject to supervisory action under:
- 952 (A) Chapter 2, Possession of Depository Institution by Commissioner; or
- 953 (B) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- 954 (b) The commissioner may waive payment of the competitive equity assessment for
955 more than one fiscal year if for each of the fiscal years the requirements of Subsection (7)(a)

956 are met.

957 Section 22. Section **7-9-57** is enacted to read:

958 **7-9-57. Waiver of limitations on member-business loans.**

959 (1) Once a credit union, including a nonexempt credit union, files a notice of election
960 to pay a competitive equity assessment in accordance with Section 7-9-56, the credit union is
961 not subject to the following for a member-business loan extended by the credit union on or
962 after the day on which the credit union files the notice of election to pay the competitive equity
963 assessment:

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

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

967 (i) a person that is a business entity, only if at least one individual having a controlling
968 interest in that business entity is a member of the credit union at the time the member-business
969 loan is extended; or

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

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

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

974 (2) (a) Notwithstanding Subsection (1), a credit union is subject to the following in
975 extending a member-business loan:

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

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

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

980 (ii) any rule made by the commissioner under this section.

981 (b) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah
982 Administrative Rulemaking Act, that apply the requirements or limitations described in
983 Subsection (2)(a)(i) to a member-business loan extended by a credit union that has filed a
984 notice of election to pay a competitive equity assessment.

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

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

988 **59-7-101. Definitions.**

989 As used in this chapter:

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

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

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

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

1000 (b) "Affiliated group" does not include corporations that are qualified to do business
1001 but are not otherwise doing business in this state.

1002 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
1003 is limited and preferred as to dividends.

1004 (3) "Apportionable income" means adjusted income less nonbusiness income net of
1005 related expenses, to the extent included in adjusted income.

1006 (4) "Apportioned income" means apportionable income multiplied by the
1007 apportionment fraction as determined in Section 59-7-311.

1008 (5) "Business income" means income as defined in Section 59-7-302.

1009 (6) "Corporate return" or "return" includes a combined report.

1010 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
1011 than 50% of the outstanding voting stock of:

1012 (i) a parent-subsiary controlled group as defined in Section 1563, Internal Revenue
1013 Code, except that 50% shall be substituted for 80%;

1014 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
1015 Code, except that 50% shall be substituted for 80%; or

1016 (iii) three or more corporations each of which is a member of a group of corporations
1017 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

- 1018 (A) a common parent corporation included in a group of corporations described in
1019 Subsection (2)(a)(i); and
- 1020 (B) included in a group of corporations described in Subsection (2)(a)(ii).
- 1021 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
1022 Internal Revenue Code.
- 1023 (8) "Corporation" includes:
- 1024 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
1025 Code; and
- 1026 (b) other organizations that are taxed as corporations for federal income tax purposes
1027 under the Internal Revenue Code.
- 1028 (9) "Dividend" means any distribution, including money or other type of property,
1029 made by a corporation to its shareholders out of its earnings or profits accumulated after
1030 December 31, 1930.
- 1031 (10) (a) "Doing business" includes any transaction in the course of its business by a
1032 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
1033 this state.
- 1034 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
- 1035 (i) the right to do business through incorporation or qualification;
- 1036 (ii) the owning, renting, or leasing of real or personal property within this state; and
- 1037 (iii) the participation in joint ventures, working and operating agreements, the
1038 performance of which takes place in this state.
- 1039 (11) "Domestic corporation" means a corporation that is incorporated or organized
1040 under the laws of this state.
- 1041 (12) (a) "Farmers' cooperative" means an association, corporation, or other
1042 organization that is:
- 1043 (i) (A) an association, corporation, or other organization of:
- 1044 (I) farmers; or
- 1045 (II) fruit growers; or
- 1046 (B) an association, corporation, or other organization that is similar to an association,
1047 corporation, or organization described in Subsection (12)(a)(i)(A); and
- 1048 (ii) organized and operated on a cooperative basis to:

1049 (A) (I) market the products of members of the cooperative or the products of other
1050 producers; and

1051 (II) return to the members of the cooperative or other producers the proceeds of sales
1052 less necessary marketing expenses on the basis of the quantity of the products of a member or
1053 producer or the value of the products of a member or producer; or

1054 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
1055 other persons; and

1056 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at
1057 actual costs plus necessary expenses to the members of the cooperative or other persons.

1058 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
1059 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1060 Rulemaking Act, shall define:

1061 (A) the terms:

1062 (I) "member"; and

1063 (II) "producer"; and

1064 (B) what constitutes an association, corporation, or other organization that is similar to
1065 an association, corporation, or organization described in Subsection (12)(a)(i)(A).

1066 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
1067 requirements under federal law for a farmers' cooperative.

1068 (13) "Foreign corporation" means a corporation that is not incorporated or organized
1069 under the laws of this state.

1070 (14) (a) "Foreign operating company" means a corporation that:

1071 (i) is incorporated in the United States; and

1072 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
1073 conducted outside the United States.

1074 (b) "Foreign operating company" does not include a corporation that qualifies for the
1075 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

1076 (15) "Foreign sales corporation" means a corporation as defined in Section 922,
1077 Internal Revenue Code.

1078 (16) "Income" includes losses.

1079 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective

1080 during the year in which Utah taxable income is determined.

1081 (18) "Nonbusiness income" means income as defined in Section 59-7-302.

1082 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the
1083 last day of the taxable year of the S corporation, is:

1084 (a) an individual not domiciled in Utah; or

1085 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

1086 (20) "Related expenses" means:

1087 (a) expenses directly attributable to nonbusiness income; and

1088 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
1089 and business income which bears the same ratio to the aggregate amount of such interest or
1090 other expense, determined without regard to this Subsection (20), as the average amount of the
1091 asset producing the nonbusiness income bears to the average amount of all assets of the
1092 taxpayer within the taxable year.

1093 (21) "Resident shareholder" means any shareholder of an S corporation who is not a
1094 nonresident shareholder.

1095 (22) "S corporation" means a small business corporation as defined in Section 1361,
1096 Internal Revenue Code.

1097 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
1098 Section 168, Internal Revenue Code.

1099 (24) "State of the United States" includes any of the 50 states or the District of
1100 Columbia and "United States" includes the 50 states and the District of Columbia.

1101 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such
1102 calendar year upon the basis of which the adjusted income is computed.

1103 (b) In the case of a return made for a fractional part of a year under this chapter or
1104 under rules prescribed by the commission, "taxable year" includes the period for which such
1105 return is made.

1106 (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

1107 (27) "Threshold level of business activity" means business activity in the United States
1108 equal to or greater than 20% of the corporation's total business activity as determined under
1109 Section 59-7-401.

1110 (28) Except as provided in Section 59-7-102, "unadjusted income" means federal

1111 taxable income as determined on a separate return basis before intercompany eliminations as
1112 determined by the Internal Revenue Code, before the net operating loss deduction and special
1113 deductions for dividends received.

1114 (29) (a) "Unitary group" means a group of corporations that:

1115 (i) are related through common ownership; and

1116 (ii) by a preponderance of the evidence as determined by a court of competent
1117 jurisdiction or the commission, are economically interdependent with one another as
1118 demonstrated by the following factors:

1119 (A) centralized management;

1120 (B) functional integration;

1121 (C) economies of scale.

1122 (b) "Unitary group" does not include S corporations.

1123 (30) "Utah net loss" means the current year Utah taxable income before Utah net loss
1124 deduction, if determined to be less than zero.

1125 (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable
1126 years that may be carried back or carried forward to the current taxable year in accordance with
1127 Section 59-7-110.

1128 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction
1129 less Utah net loss deduction.

1130 (b) "Utah taxable income" includes income from tangible or intangible property located
1131 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
1132 commerce.

1133 (33) "Utah taxable income before net loss deduction" means apportioned income plus
1134 nonbusiness income allocable to Utah net of related expenses.

1135 (34) (a) "Water's edge combined report" means a report combining the income and
1136 activities of:

1137 (i) all members of a unitary group that are:

1138 (A) corporations organized or incorporated in the United States, including those
1139 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
1140 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

1141 (B) corporations organized or incorporated outside of the United States meeting the

1142 threshold level of business activity; and

1143 (ii) an affiliated group electing to file a water's edge combined report under Subsection
1144 59-7-402(2).

1145 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
1146 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
1147 unitary group.

1148 (35) "Worldwide combined report" means the combination of the income and activities
1149 of all members of a unitary group irrespective of the country in which the corporations are
1150 incorporated or conduct business activity.

1151 Section 24. Section **59-7-102** is amended to read:

1152 **59-7-102. Exemptions.**

1153 (1) Except as provided in this section, the following are exempt from this chapter:

1154 (a) an organization exempt under Section 501, Internal Revenue Code;

1155 (b) an organization exempt under Section 528, Internal Revenue Code;

1156 (c) an insurance company that is otherwise taxed on the insurance company's premiums
1157 under Chapter 9, Taxation of Admitted Insurers;

1158 (d) a building authority as defined in Section 17A-3-902;

1159 (e) a farmers' cooperative; or

1160 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
1161 ownership interest in:

1162 (i) a project, as defined in Section 11-13-103; or

1163 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1164 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
1165 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
1166 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
1167 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1168 (a) that person's ownership of tangible personal property located at the premises of a
1169 printer's facility in this state with which the person has contracted for printing; or

1170 (b) the activities of the person's employees or agents who are:

1171 (i) located solely at the premises of a printer's facility; and

1172 (ii) performing services:

1173 (A) related to:
1174 (I) quality control;
1175 (II) distribution; or
1176 (III) printing services; and
1177 (B) performed by the printer's facility in this state with which the person has contracted
1178 for printing.

1179 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
1180 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
1181 8, Unrelated Business Income, to the extent provided in Part 8.

1182 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
1183 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
1184 Revenue Code, the organization's income is also taxable under this chapter.

1185 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in
1186 Section 7-9-3, is not exempt from this chapter beginning on the first day of the month
1187 immediately following the day on which the nonexempt credit union becomes a nonexempt
1188 credit union under Section 7-9-55.

1189 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit
1190 union that is subject to this chapter in accordance Subsection (5)(a) is an amount equal to the
1191 federal taxable income the nonexempt credit union would have if the nonexempt credit union
1192 were subject to a federal income tax:

1193 (i) determined on a separate return basis before intercompany eliminations as
1194 determined by the Internal Revenue Code; and

1195 (ii) before:

1196 (A) the net operating loss deduction; and

1197 (B) special deductions for dividends received.

1198 **Section 25. Repealer.**

1199 This act repeals:

1200 **Section 7-9-53, Grandfathering.**

1201 **Section 7-9-54, Electing to terminate grandfathering.**