

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 and banks. This act establishes a legislative task force to study issues related to credit unions and banks. The act establishes task force membership, duties, and salaries and designates staff for the task force. The act requires the task force to prepare a report. The act makes a one-time appropriation of \$39,500 from the General Fund for fiscal year 2002-2003 to pay for task force expenses. This act provides intent language. The act provides repeal dates. This act provides effective dates.

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

AMENDS:

HB0162S10

- 26 **7-1-708**, as last amended by Chapter 49, Laws of Utah 1995
- 27 **7-7-10**, as last amended by Chapter 244, Laws of Utah 1985
- 28 **7-9-2**, as enacted by Chapter 16, Laws of Utah 1981
- 29 **7-9-3**, as last amended by Chapter 329, Laws of Utah 1999
- 30 **7-9-5**, as last amended by Chapter 116, Laws of Utah 2001
- 31 **7-9-6**, as last amended by Chapter 329, Laws of Utah 1999
- 32 **7-9-11**, as last amended by Chapter 329, Laws of Utah 1999
- 33 **7-9-12**, as last amended by Chapter 329, Laws of Utah 1999
- 34 **7-9-16**, as last amended by Chapter 329, Laws of Utah 1999
- 35 **7-9-20**, as last amended by Chapter 329, Laws of Utah 1999
- 36 **7-9-26**, as last amended by Chapter 182, Laws of Utah 1996
- 37 **7-9-34**, as last amended by Chapter 178, Laws of Utah 1994
- 38 **7-9-37**, as last amended by Chapter 329, Laws of Utah 1999
- 39 **7-9-39**, as last amended by Chapter 329, Laws of Utah 1999
- 40 **7-9-39.5**, as enacted by Chapter 329, Laws of Utah 1999
- 41 **7-9-46**, as last amended by Chapter 49, Laws of Utah 1995
- 42 **7-9-51**, as enacted by Chapter 329, Laws of Utah 1999
- 43 **7-9-52**, as enacted by Chapter 329, Laws of Utah 1999
- 44 **7-9-53**, as enacted by Chapter 329, Laws of Utah 1999
- 45 **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002
- 46 **59-7-101**, as last amended by Chapter 76, Laws of Utah 2002
- 47 **59-7-102**, as last amended by Chapters 76 and 286, Laws of Utah 2002

48 ENACTS:

- 49 **7-9-55**, Utah Code Annotated 1953
- 50 **7-9-56**, Utah Code Annotated 1953
- 51 **7-9-57**, Utah Code Annotated 1953

52 REPEALS:

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

54 This act enacts uncodified material.

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

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

57 **7-1-708. Establishing branches and relocating offices -- Application and**
58 **procedure for approval -- Limitations on nonexempt credit unions.**

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

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

65 (a) filing an application with the department in a form the commissioner prescribes;
66 and

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

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

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

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

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

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

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

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

85 (b) disapprove an application.

86 (7) (a) The commissioner's approval of any application under this section is considered
87 revoked, unless the office is opened and operating within one year of the date approved by the

88 commissioner for commencement of operations.

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

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

93 (ii) for good cause shown.

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

97 (9) (a) Notwithstanding the other provisions of this section, and subject to Section
98 7-9-58, an application of a nonexempt credit union to establish a branch that is to be located
99 outside of the county in which the nonexempt credit union has the greatest number of branches
100 may not be approved unless prior to the approval of the application the nonexempt credit union
101 files a notice of election to pay a competitive equity assessment as provided in Section 7-9-56.

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

104 (i) a loan production office; or

105 (ii) any other office or facility that:

106 (A) is owned or operated by:

107 (I) the nonexempt credit union; or

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

110 (B) is open to the public; and

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

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

114 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

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

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

118 (2) (a) The members entitled to vote at any meeting of the members shall be those who

119 are members of record at the end of the calendar month next preceding the date of the meeting
120 of members, except those who have ceased to be members.

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

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

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

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

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

132 (A) in person; or

133 (B) by proxy[-but no].

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

137 (b) Every proxy shall:

138 (i) be in writing [and];

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

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

142 (A) when filed with the secretary;

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

144 (C) until;

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

146 (II) superseded by subsequent proxies.

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

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

150 question unless this chapter specifically provides otherwise.

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

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

153 (i) state:

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

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

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

157 (ii) (A) be published:

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

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

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

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

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

168 **7-9-2. Description of credit unions.**

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

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

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

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

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

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

180 **7-9-3. Definitions.**

181 As used in this chapter:

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

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

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

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

186 (A) an identifiable interest;

187 (B) an identifiable purpose;

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

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

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

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

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

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

194 and:

195 (A) a consumer;

196 (B) a customer; or

197 (C) a client; or

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

199 (2) "Capital and surplus" means:

200 (a) shares;

201 (b) deposits;

202 (c) reserves; and

203 (d) undivided earnings.

204 (3) "Corporate credit union" means any credit union organized pursuant to any state or

205 federal act for the purpose of serving other credit unions.

206 (4) "Credit union service organization" means a service organization that provides

207 services that are:

208 (a) subject to Subsection (4)(b)(i), permitted by rule made by the commissioner in

209 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

210 (b) (i) except for the extension of credit by the service organization, limited primarily

211 to:

- 212 (A) credit unions that hold an ownership interest in the service organization;
- 213 (B) members of credit unions that hold an ownership interest in the service
- 214 organization; or
- 215 (C) members of credit unions that contract with the service organization; and
- 216 (ii) for purposes of the extension of credit by the service organization, limited to
- 217 members of a credit union that holds an ownership interest in the service organization.

218 [~~(4)~~] (5) "Deposits" means that portion of the capital paid into the credit union by

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

220 (6) "~~[limited field]~~ Field of membership" means persons designated as eligible for

221 credit union membership in accordance with:

- 222 (a) Section 7-9-51 or 7-9-53[-]; and
- 223 (b) the bylaws of the credit union.

224 [~~(5)~~] (7) "Immediate family" means parents, spouse, surviving spouse, children, and

225 siblings of the member.

226 [~~(7)~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,

227 the proceeds of which will be used for:

- 228 (i) a commercial purpose;
- 229 (ii) other business investment property or venture purpose; or
- 230 (iii) an agricultural purpose.

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

232 (i) that is fully secured by a lien on a one- to four- family dwelling that is the primary

233 residence of a member;

234 (ii) that is fully secured by:

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

236 (B) deposits in other financial institutions;

237 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an

238 advance commitment to purchase in full by, an agency of:

239 (A) the federal government;

240 (B) a state; or

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

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

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

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

247 [~~(9)~~] (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts
248 from which owners are permitted to make withdrawals by negotiable or transferable
249 instruments or other orders for the purpose of making transfers to other persons or to the
250 owner.

251 [~~(10)~~] (11) "Shares" means that portion of the capital paid into the credit union by
252 members on which dividends may be paid.

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

254 **7-9-5. Powers of credit unions.**

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

257 (1) make contracts;

258 (2) sue and be sued;

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

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

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

266 (6) require an entrance or membership fee;

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

268 (a) shares;

269 (b) share certificates;

270 (c) deposits;

271 (d) deposit certificates;

272 (e) share drafts;

273 (f) NOW accounts; and

274 (g) other instruments;

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

280 (9) charge fees for its services;

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

283 (11) extend credit secured by real estate;

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

288 (i) other credit unions;

289 (ii) credit union service organizations; or

290 (iii) other financial organizations; and

291 (b) make co-lending arrangements, including loan participation arrangements, in
292 accordance with Subsection (12)(a) subject to the following:

293 (i) the credit union or credit union service organization that originates a loan for which
294 [participation] co-lending arrangements are made [retains] shall retain an interest of at least
295 10% of the loan;

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

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

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

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

310 (15) act as fiscal agent for and receive payments on shares and deposits from the
311 federal government, this state, or its agencies or political subdivisions not inconsistent with the
312 laws of this state;

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

315 (17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

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

335 (26) purchase reasonable accident and health insurance, including accidental death

336 benefits, for directors and committee members through insurance companies licensed in this
337 state as provided in its bylaws;

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

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

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

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

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

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

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

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

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

356 (34) engage in other activities, exercise other powers, and enjoy other rights,
357 privileges, benefits, and immunities authorized by rules of the commissioner;

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

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

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

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

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

366 **7-9-6. Formation of corporation to conduct credit union -- Approval of**

367 **commissioner.**

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

371 (i) this chapter;

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

373 (iii) Chapter 1, General Provisions.

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

376 (i) the formation of the corporation; and

377 (ii) the duties and obligations of:

378 (A) the corporation;

379 (B) the corporation's officers; and

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

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

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

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

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

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

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

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

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

397 (ii) a credit union may not be required to obtain federal insurance if the credit union

398 complies with Subsection 7-9-45(2).

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

400 **7-9-11. Bylaws and amendments to be approved.**

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

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

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

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

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

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

417 **7-9-12. Contents of bylaws.**

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

419 (1) the name of the credit union;

420 (2) the purpose for which [it] the credit union was formed;

421 (3) a [limited] field of membership of the credit union that complies with Section
422 7-9-51 or 7-9-53;

423 (4) the number of directors and procedures for their election;

424 (5) the term of directors;

425 (6) whether a credit manager, credit committee, or combination of both shall be
426 responsible for credit functions of the credit union;

427 (7) the duties of the officers;

428 (8) the time of year of the annual meeting of members;

- 429 (9) the manner in which members shall be notified of meetings;
- 430 (10) the number of members which shall constitute a quorum at meetings;
- 431 (11) the manner of amending;
- 432 (12) the manner in which officers may act as surety; and
- 433 (13) such other matters, rules, and regulations as the board of directors consider
- 434 necessary.

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

436 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
437 **of membership.**

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

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

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

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

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

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

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

453 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

456 (2) The bylaws may provide balloting by:

- 457 (a) mail;
- 458 (b) ballot box; or
- 459 (c) both mail and ballot box.

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

491 loan that the credit union has issued to that member exceeds at any one time:

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

493 (I) \$1,000; or

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

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

496 (I) \$25,000;

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

498 (III) 25% of the regular reserve.

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

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

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

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

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

510 (II) \$250,000.

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

515 (A) the actual undivided earnings; and

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

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

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

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

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

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

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

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

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

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

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

540 (B) by:

541 (I) a credit union service organization; or

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

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

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

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

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

553 excess portion by, an agency of:

554 (I) the federal government;

555 (II) a state; or

556 (III) a political subdivision of the state.

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

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

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

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

566 [~~(8)~~] (9) As provided in this chapter or in the credit union bylaws, the board of
567 directors:

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

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

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

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

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

574 (d) shall have an executive committee;

575 (e) may appoint an investment officer;

576 (f) shall elect a secretary;

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

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

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

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

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

584 with Section 7-9-45.

585 ~~[(9)]~~ (10) A person may not be a member of more than one committee except as
586 otherwise provided in this chapter or in the credit union bylaws.

587 ~~[(10)]~~ (11) The president and secretary may not be the same person.

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

589 **7-9-26. Loans to members -- Investment officers -- Investments.**

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

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

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

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

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

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

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

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

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

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

615 **7-9-34. Tax exemption of credit unions.**

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

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

621 [~~(3) For purposes of the corporate tax, credit unions shall be governed by Section~~
622 ~~59-7-102.]~~

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

625 (2) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title
626 59, Chapter 7, Corporate Franchise and Income Taxes, beginning on the first day of the month
627 immediately following the day on which the credit union becomes a nonexempt credit union
628 under Section 7-9-55.

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

630 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**
631 **acquired credit union.**

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

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

636 **7-9-39. Voluntary merger.**

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

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

641 (b) the commissioner approves the merger plan;

642 (c) the majority of the members of each merging credit union present at a meeting
643 called for the purpose of considering the merger plan votes to approve the merger plan, but a
644 vote of the membership of the surviving credit union is not required if its board of directors
645 determines that the merger will not have any significant effect on the organization,

646 membership, or financial condition of the credit union; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

676 (b) may service any member-business loan of the merging credit union until the

677 member-business loan is paid in full.

678 (5) (a) This section shall be interpreted, whenever possible, to permit a credit union
679 chartered under this chapter to merge with a credit union chartered under any other law if the
680 preservation of membership interest is concerned.

681 (b) The commissioner may under Subsection (1)(b) approve a merger plan that
682 includes the addition of the residents of a county in the [limited] field of membership of the
683 merging credit union to the [limited] field of membership of the surviving credit union if the
684 commissioner finds that:

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

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

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

693 (a) The domicile-county of the surviving credit union is:

694 (i) if the credit union does not have a [limited] field of membership under Subsection
695 7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of
696 branches as of the date the merger is effective; or

697 (ii) if the credit union has a [limited] field of membership under Subsection
698 7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union
699 under Section 7-9-53;

700 (b) Within the surviving credit union's domicile-county, the surviving credit union may
701 establish, relocate, or otherwise change the physical location of the credit union's:

702 (i) main office; or

703 (ii) branch.

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

706 (i) establish a main office or branch if the main office or branch was not located in the
707 county as of the date that the merger is effective;

708 (ii) participate in a service center in which it does not participate as of the date that the
709 merger is effective; or

710 (iii) relocate the surviving credit union's main office or a branch located in the county
711 as of the date that the merger is effective unless the commissioner finds that the main office or
712 branch is being relocated within a three-mile radius of the original location of the main office
713 or branch.

714 (d) After the merger, the surviving credit union may admit as a member:

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

717 (ii) a person belonging to an association that:

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

719 (B) resides in the domicile-county of the surviving credit union, as defined in Section
720 7-9-53.

721 (e) In addition to any requirement under this Subsection (6), a surviving credit union
722 shall comply with any requirement under this title for the establishment, relocation, or change
723 in the physical location of a main office or branch of a credit union.

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

725 **7-9-39.5. Supervisory merger.**

726 If a credit union is merged with another credit union as a result of a supervisory action
727 under Chapter 2 or 19, the commissioner may permit the surviving credit union to have a
728 [~~limited~~] field of membership that is larger than a [~~limited~~] field of membership permitted
729 under Section 7-9-51.

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

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

732 **Supervision -- Examination.**

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

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

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

738 (b) the branch has been authorized by:

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

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

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

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

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

750 **7-9-51. Field of membership.**

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

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

754 (b) the employees of the credit union;

755 (c) residents of a single county; [~~and~~]

756 (d) one or more associations[~~;~~]; and

757 (e) if approved by the commissioner in accordance with Subsection 7-9-52(5),
758 residents of:

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

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

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

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

766 (a) is determined under Subsection 7-9-53(2)(c) or (2)(d);

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

768 (c) is permitted by the commissioner after a merger in accordance with Section
769 7-9-39.5.

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

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

775 **7-9-52. Expansion of a field of membership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

801 (iv) any potential harm the expansion of the [limited] field of membership may have on
802 the institutions described in Subsection (2)(a); and

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

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

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

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

809 (c) finds that:

810 (i) the credit union is adequately capitalized;

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

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

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

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

820 (5) This section may not be interpreted to permit a credit union to:

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

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

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

829 (a) require that a supervisor examine and submit written findings and recommendations
830 to the commissioner as to whether but for the residents described in Subsection (1)(c) being
831 included in the field of membership of the credit union, no depository institutions would likely

832 be located within a reasonable distance from the city or town described in Subsection (1)(c);
833 and

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

837 Section 19. Section **7-9-53** is amended to read:

838 **7-9-53. Grandfathering.**

839 (1) As used in this section [~~and Section 7-9-54~~]:

840 (a) "Association that resides in a domicile-county" means an association that:

841 (i) operates a place of business or other physical location in the domicile-county; or

842 (ii) has at least 100 members that are residents of the domicile-county.

843 (b) "Domicile-county" means the county:

844 (i) in the [~~limited~~] field of membership of the credit union as of January 1, 1999; and

845 (ii) in which the credit union has located the greatest number of branches as of January
846 1, 1999.

847 (c) "Grandfathered [~~limited~~] field of membership" means the [~~limited~~] field of
848 membership as of May 3, 1999, of a credit union described in Subsection (2)(d).

849 (2) For each credit union formed before January 1, 1999, its [~~limited~~] field of
850 membership as of May 3, 1999, is determined as follows:

851 (a) if the [~~limited~~] field of membership stated in the bylaws of the credit union as of
852 January 1, 1999, complies with Section 7-9-51, the credit union's [~~limited~~] field of membership
853 is the [~~limited~~] field of membership indicated in its bylaws;

854 (b) (i) the [~~limited~~] field of membership of a credit union as of May 3, 1999, is as
855 provided in Subsection (2)(b)(ii) if:

856 (A) the [~~limited~~] field of membership stated in the bylaws of the credit union as of
857 January 1, 1999, includes the residents of more than one county; and

858 (B) as of January 1, 1999, the credit union's main office and any of its branches are
859 located in only one county in its [~~limited~~] field of membership;

860 (ii) as of May 3, 1999, the [~~limited~~] field of membership of a credit union described in
861 Subsection (2)(b)(i) is:

862 (A) the immediate family of a member of the credit union;

863 (B) the employees of the credit union;

864 (C) residents of the one county in which the credit union has its main office or
865 branches as of January 1, 1999, and

866 (D) any association that as of January 1, 1999, is in the [limited] field of membership
867 of the credit union;

868 (c) (i) the [limited] field of membership of a credit union as of May 3, 1999, is as
869 provided in Subsection (2)(c)(ii) if:

870 (A) the [limited] field of membership of a credit union stated in the bylaws of the
871 credit union as of January 1, 1999, includes residents of more than one county;

872 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
873 county; and

874 (C) as a result of a merger pursuant to a supervisory action under Chapter 2 or 19 that
875 is effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a
876 branch in a county in the [limited] field of membership of the credit union and the credit union
877 did not have a branch in the county before the merger;

878 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
879 Subsection (2)(c)(i) is the same [limited] field of membership that the credit union would have
880 had under Subsection (2)(d) except that the credit union:

881 (A) is not subject to Subsection (3); and

882 (B) is subject to Subsection (4)(b); and

883 (d) (i) the [limited] field of membership of a credit union as of May 3, 1999, is as
884 provided in Subsection (2)(d)(ii) if:

885 (A) the [limited] field of membership stated in the bylaws of the credit union as of
886 January 1, 1999, includes the residents of more than one county; and

887 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
888 county;

889 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
890 Subsection (2)(d)(i) is:

891 (A) the immediate family of a member of the credit union;

892 (B) the employees of the credit union;

893 (C) residents of the credit union's domicile-county;

894 (D) the residents of any county other than the domicile-county:
895 (I) if, as of January 1, 1999, the county is in the [limited] field of membership of the
896 credit union; and
897 (II) in which, as of January 1, 1994, the credit union had located its main office or a
898 branch; and
899 (E) any association that as of January 1, 1999, is in the [limited] field of membership
900 of the credit union.
901 (3) If a credit union's [limited] field of membership is as described in Subsection
902 (2)(d), beginning May 3, 1999, the credit union:
903 (a) within the credit union's domicile-county, may establish, relocate, or otherwise
904 change the physical location of the credit union's:
905 (i) main office; or
906 (ii) branch;
907 (b) within a county other than a domicile-county that is in the credit union's
908 grandfathered [limited] field of membership, may not:
909 (i) establish a main office or branch that:
910 (A) was not located in the county as of January 1, 1999; or
911 (B) for which the credit union has not received by January 1, 1999, approval or
912 conditional approval of a site plan for the main office or branch from the planning commission
913 of the municipality where the main office or branch will be located;
914 (ii) participate in a service center in which it does not participate as of January 1, 1999;
915 or
916 (iii) relocate the credit union's main office or a branch located in the county as of
917 January 1, 1999, unless the commissioner finds that the main office or branch is relocated
918 within a three-mile radius of where it was originally located; and
919 (c) may only admit as a member:
920 (i) a person in the credit union's grandfathered [limited] field of membership; or
921 (ii) a person belonging to an association that:
922 (A) is added to the [limited] field of membership of the credit union; and
923 (B) resides in the domicile-county of the credit union.
924 (4) (a) If a credit union's [limited] field of membership is as described in Subsection

925 (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a [limited]
926 field of membership under Section 7-9-51.

927 (b) If a credit union's [limited] field of membership is as described in Subsection (2)(c),
928 as of May 3, 1999, the credit union:

929 (i) within the credit union's domicile-county, may establish, relocate, or otherwise
930 change the physical location of the credit union's:

931 (A) main office; or

932 (B) branch;

933 (ii) within a county other than its domicile-county that is in the credit union's [limited]
934 field of membership under Subsection (2)(c), may not:

935 (A) establish a main office or branch that was not located in the county as of January 1,
936 1999;

937 (B) participate in a service center in which it does not participate as of January 1, 1999;
938 or

939 (C) relocate the credit union's main office or a branch located in the county as of
940 January 1, 1999, unless the commissioner finds that the main office or branch is relocated
941 within a three-mile radius of where it was originally located; and

942 (iii) may only admit as a member:

943 (A) a person in the credit union's [limited] field of membership under Subsection
944 (2)(c); or

945 (B) a person belonging to an association that is added to the [limited] field of
946 membership of the credit union, regardless of whether the association resides in the
947 domicile-county of the credit union.

948 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union
949 described in Subsection (2)(c) or (2)(d) may:

950 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but
951 that is not located in a county that is in the credit union's [limited] field of membership as of
952 May 3, 1999; and

953 (ii) serve a member who is not in a credit union's [limited] field of membership as of
954 May 3, 1999, if the member is a member of the credit union as of March 15, 1999.

955 (b) Subsection (5)(a) does not authorize a credit union to:

956 (i) establish a branch in a county that is not in the credit union's [limited] field of
957 membership as of May 3, 1999, unless the branch meets the requirements under this title for
958 establishing a branch; or

959 (ii) for a credit union described in Subsection (2)(d), include in its [limited] field of
960 membership an association that:

961 (A) as of January 1, 1999, is not included in the credit union's [limited] field of
962 membership; and

963 (B) does not reside within the credit union's domicile-county.

964 (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later
965 than August 3, 1999, to comply with this section.

966 (7) In addition to any requirement under this section, a credit union shall comply with
967 any requirement under this title for the establishment, relocation, or change in the physical
968 location of a main office or branch of a credit union.

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

970 **7-9-55. Nonexempt credit unions.**

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

973 (a) that:

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

975 (ii) are established in whole or in part with assets from a credit union that as of May 5,
976 2003, has a field of membership that includes all residents of two or more counties; and

977 (b) if:

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

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

982 (A) a corporate credit union;

983 (B) a trade association; or

984 (C) an association representing credit unions generally.

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

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

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

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

994 (ii) the related credit union files a quarterly report in accordance with Section 7-1-317
995 on or after the date described in Subsection (2)(c), if the quarterly report is the second
996 consecutive quarterly report that shows assets that if aggregated with the assets of all related
997 credit unions equal or exceed \$100,000,000.

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

999 (i) residents of a county that is added to the field of membership of a credit union as a
1000 result of a supervisory action under Chapter 2 or 19 are not considered to be within the field of
1001 membership of that credit union; and

1002 (ii) residents of a city of the third class or town that are added to the field of
1003 membership of a credit union in accordance with Section 7-9-52 are not considered to be
1004 within the field of membership of that credit union unless all residents of the county in which
1005 that city or town are located are included in the field of membership of the credit union.

1006 (c) (i) In determining whether two consecutive quarterly reports meeting the
1007 requirements of Subsection (2)(a) have been filed, a credit union shall include quarterly reports
1008 filed by the credit union in accordance with Section 7-1-317 on or after January 1, 2003.

1009 (ii) If by including in accordance with this Subsection (2)(c) quarterly reports filed on
1010 or after January 1, 2003 the credit union would become a nonexempt credit union under
1011 Subsection (2)(a) on a day before May 5, 2003, that credit union becomes a nonexempt credit
1012 union on May 5, 2003.

1013 (d) (i) Except as provided in Subsection (2)(d)(ii) and beginning with calendar year
1014 2005, for each calendar year the amount of assets required under Subsection (2)(a) for a credit
1015 union to become a nonexempt credit union shall increase or decrease by a percentage equal to
1016 the percentage difference between:

1017 (A) the consumer price index for the preceding calendar year; and

- 1018 (B) the consumer price index for calendar year 2003.
- 1019 (ii) Notwithstanding Subsection (2)(d)(i), the amount of assets required under
- 1020 Subsection (2)(a) may not decrease below \$100,000,000.
- 1021 (iii) For purposes of this Subsection (2)(d), the consumer price index shall be
- 1022 calculated as provided in Sections (1)(f)(4) and (1)(f)(5), Internal Revenue Code.
- 1023 (iv) On or before January 31 of each year beginning with calendar year 2005, the
- 1024 commissioner shall notify credit unions organized under this chapter of the amount of assets
- 1025 required under Subsection (2)(a) as adjusted by the consumer price index in accordance with
- 1026 this Subsection (2)(d).
- 1027 (v) In determining whether a quarterly report shows that a credit union has assets that
- 1028 equal or exceed the amount required by Subsection (2)(a), the amount required under
- 1029 Subsection (2)(a) shall be the amount adjusted by the consumer price index in accordance with
- 1030 this Subsection (2)(d) for the calendar year in which the quarter occurred.
- 1031 (3) If a credit union becomes a nonexempt credit union under this section, the
- 1032 nonexempt credit union is a nonexempt credit union:
- 1033 (a) for as long as the nonexempt credit union is organized under this chapter; and
- 1034 (b) notwithstanding whether after the day on which the nonexempt credit union
- 1035 becomes a nonexempt credit union the nonexempt credit union meets the requirements of
- 1036 Subsection (2)(a).
- 1037 Section 21. Section **7-9-56** is enacted to read:
- 1038 **7-9-56. Competitive equity assessment.**
- 1039 (1) For purposes of this section, "competitive equity assessment" means an equitable
- 1040 amount calculated for each fiscal year in accordance with a formula adopted by the Legislature
- 1041 during the 2004 Annual General Session after consideration of the formula recommended by
- 1042 the Financial Institutions Task Force created in this act.
- 1043 (2) (a) A credit union may elect to pay a competitive equity assessment by filing a
- 1044 notice of election to pay a competitive equity assessment with:
- 1045 (i) the commissioner; and
- 1046 (ii) the State Tax Commission.
- 1047 (b) A notice of election to pay a competitive equity assessment is not considered filed
- 1048 until the later of the day on which the notice of election to pay a competitive equity assessment

1049 is filed with:

1050 (i) the commissioner; or

1051 (ii) the State Tax Commission.

1052 (c) If a credit union files a notice of election to pay a competitive equity assessment,

1053 the credit union shall pay the competitive equity assessment in accordance with Subsection (5).

1054 (3) A credit union may not revoke an election to pay a competitive equity assessment

1055 after the day on which the credit union files a notice of election to pay a competitive equity

1056 assessment with the commissioner.

1057 (4) (a) In accordance with this Subsection (4), for a credit union that files a notice of

1058 election to pay a competitive equity assessment under this title, notwithstanding the other

1059 provisions of this section, the commissioner may issue an order waiving the requirement that

1060 the credit union pay the competitive equity assessment if:

1061 (i) the credit union files a request for waiver; and

1062 (ii) the credit union is subject to supervisory action under:

1063 (A) Chapter 2, Possession of Depository Institution by Commissioner; or

1064 (B) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

1065 (b) (i) The commissioner may waive payment of the competitive equity assessment for

1066 the period:

1067 (A) beginning on the first day of the calendar quarter immediately following the day on

1068 which the request for waiver is filed in accordance with Subsection (4)(a); and

1069 (B) ending the last day of the next calendar quarter following the calendar quarter

1070 described in Subsection (4)(b)(i)(A).

1071 (ii) The commissioner may waive payment of the competitive equity assessment for the

1072 two calendar quarters immediately following the period described in Subsection (4)(b)(i) if for

1073 those calendar quarters the conditions of Subsection (4)(a) are met.

1074 (c) The commissioner shall notify the State Tax Commission of the waiver in writing:

1075 (i) by no later than the last day of the calendar quarter described in Subsection

1076 (4)(b)(i)(A); and

1077 (ii) specifying the two calendar quarters for which payment of the competitive equity

1078 assessment is waived.

1079 (d) (i) The following are confidential under Section 7-1-802:

- 1080 (A) a request for waiver filed in accordance with Subsection (4)(a);
1081 (B) an order of the commissioner issued under this section waiving the payment of the
1082 competitive equity assessment; and
1083 (C) the notice described in Subsection (4)(c), except that the notice may be provided
1084 the State Tax Commission in accordance with Subsection (4)(c).
1085 (ii) (A) A person listed in Subsection 59-1-403(1) may not divulge or make known in
1086 any manner any information gained by that person from the notice described in Subsection
1087 (4)(c).
1088 (B) A person who violates this Subsection (4)(d)(ii) is subject to the penalties
1089 described in Subsection 59-1-403(5).
1090 (5) (a) A credit union required to pay the competitive equity assessment under
1091 Subsection (2) shall pay the competitive equity assessment for each fiscal year:
1092 (i) to the State Tax Commission; and
1093 (ii) beginning on the first day of the month immediately following the day on which the
1094 credit union files the notice of election to pay the competitive equity assessment.
1095 (b) This Subsection (5) shall be administered by the State Tax Commission in
1096 accordance with the procedures of Title 59, Chapter 7, Part 5, Procedures and Administration.
1097 (6) (a) In addition to any penalties imposed by the State Tax Commission in
1098 accordance with Subsection (5), the commissioner may take supervisory action under Chapter
1099 2, Possession of Depository Institution by Commissioner, against a credit union that is subject
1100 to a penalty imposed by the State Tax Commission for failure to:
1101 (i) file an annual return for the competitive equity assessment that is required to be
1102 filed in accordance with Section 59-7-505; or
1103 (ii) pay the competitive equity assessment owed for a fiscal year.
1104 (b) The State Tax Commission shall notify the commissioner of any credit union that
1105 has filed a notice of election to pay a competitive equity assessment that has failed to take an
1106 action described in Subsection (6)(a).
1107 Section 22. Section **7-9-57** is enacted to read:
1108 **7-9-57. Waiver of limitations on member-business loans.**
1109 (1) If a credit union, including a nonexempt credit union, files a notice of election to
1110 pay a competitive equity assessment in accordance with Section 7-9-56, the credit union is not

1111 subject to the following for a member-business loan extended by the credit union on or after
1112 the day on which the credit union files the notice of election to pay the competitive equity
1113 assessment:

1114 (a) Subsection 7-9-5(12)(b);

1115 (b) Subsection 7-9-20(7)(b)(ii), except that the credit union may extend a
1116 member-business loan to:

1117 (i) a person that is a business entity, only if at least one individual having a controlling
1118 interest in that business entity is a member of the credit union at the time the member-business
1119 loan is extended; or

1120 (ii) a person who is an individual, only if the individual is a member of the credit union
1121 at the time the member-business loan is extended;

1122 (c) Subsection 7-9-20(7)(c); and

1123 (d) Subsection 7-9-20(8)(b)(ii).

1124 (2) (a) Notwithstanding Subsection (1), a credit union is subject to the more restrictive
1125 of the following in extending a member- business loan:

1126 (i) any requirement or limitation imposed on the extension of credit by a bank
1127 chartered under Chapter 3, Banks, including:

1128 (A) Section 7-3-19; and

1129 (B) any rule made by the commissioner in accordance with Section 7-3-19; or

1130 (ii) any requirement or limitation imposed by the National Credit Union

1131 Administration or successor federal deposit insurance agency on a state-chartered credit union
1132 insured by the National Credit Union Administration or successor federal deposit insurance
1133 agency.

1134 (b) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah
1135 Administrative Rulemaking Act, that apply the requirements or limitations described in
1136 Subsection (2)(a) to a member-business loan extended by a credit union that files a notice of
1137 election to pay a competitive equity assessment.

1138 (3) This section does not modify any requirement or limitation under this chapter on
1139 the extension by a credit union of credit that is not a member-business loan.

1140 Section 23. Section **59-1-403** is amended to read:

1141 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

1142 (1) (a) Except as provided in this section, any of the following may not divulge or make
1143 known in any manner any information gained by that person from any return filed with the
1144 commission:

- 1145 (i) a tax commissioner;
- 1146 (ii) an agent, clerk, or other officer or employee of the commission; or
- 1147 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
1148 town.

1149 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
1150 return filed with the commission is not required to produce the return or evidence of anything
1151 contained in the return in any action or proceeding in any court, except:

- 1152 (i) in accordance with judicial order;
- 1153 (ii) on behalf of the commission in any action or proceeding under:
 - 1154 (A) this title; or
 - 1155 (B) other law under which persons are required to file returns with the commission;
- 1156 (iii) on behalf of the commission in any action or proceeding to which the commission
1157 is a party; or
- 1158 (iv) on behalf of any party to any action or proceeding under this title if the report or
1159 facts shown by the return are directly involved in the action or proceeding.

1160 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
1161 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
1162 pertinent to the action or proceeding.

1163 (2) This section does not prohibit:

1164 (a) a person or that person's duly authorized representative from receiving a copy of
1165 any return or report filed in connection with that person's own tax;

1166 (b) the publication of statistics as long as the statistics are classified to prevent the
1167 identification of particular reports or returns; and

1168 (c) the inspection by the attorney general or other legal representative of the state of the
1169 report or return of any taxpayer:

- 1170 (i) who brings action to set aside or review a tax based on the report or return;
- 1171 (ii) against whom an action or proceeding is contemplated or has been instituted under
1172 this title; or

- 1173 (iii) against whom the state has an unsatisfied money judgment.
- 1174 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
1175 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1176 Rulemaking Act, provide for a reciprocal exchange of information with:
- 1177 (i) the United States Internal Revenue Service; or
1178 (ii) the revenue service of any other state.
- 1179 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1180 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
1181 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
1182 and other written statements with the federal government, any other state, any of the political
1183 subdivisions of another state, or any political subdivision of this state, except as limited by
1184 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
1185 grant substantially similar privileges to this state.
- 1186 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1187 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
1188 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
1189 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
1190 due.
- 1191 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
1192 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
1193 requested by the executive secretary, any records, returns, or other information filed with the
1194 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
1195 regarding the environmental assurance program participation fee.
- 1196 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
1197 provide that person sales and purchase volume data reported to the commission on a report,
1198 return, or other information filed with the commission under:
- 1199 (i) Chapter 13, Part 2, Motor Fuel; or
1200 (ii) Chapter 13, Part 4, Aviation Fuel.
- 1201 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
1202 as defined in Section 59-22-202, the commission shall report to the manufacturer:
- 1203 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the

1204 manufacturer and reported to the commission for the previous calendar year under Section
1205 59-14-407; and

1206 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
1207 manufacturer for which a tax refund was granted during the previous calendar year under
1208 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

1209 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
1210 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
1211 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

1212 (h) Notwithstanding Subsection (1), the commission may:

1213 (i) provide to the Division of Consumer Protection within the Department of
1214 Commerce and the attorney general data:

1215 (A) reported to the commission under Section 59-14-212; or

1216 (B) related to a violation under Section 59-14-211; and

1217 (ii) upon request provide to any person data reported to the commission under
1218 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

1219 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
1220 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
1221 and Budget, provide to the committee or office the total amount of revenues collected by the
1222 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the
1223 committee or office.

1224 (j) Notwithstanding Subsection (1), the commission shall at the request of the
1225 Legislature provide to the Legislature the total amount of sales or uses exempt under
1226 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

1227 (k) Notwithstanding Subsection (1), the commission shall make the list required by
1228 Subsection 59-14-408(3) available for public inspection.

1229 (l) Notwithstanding Subsection (1), the commission shall provide the notice to the
1230 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

1231 (4) (a) Reports and returns shall be preserved for at least three years.

1232 (b) After the three-year period provided in Subsection (4)(a) the commission may
1233 destroy a report or return.

1234 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

1235 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
1236 the person shall be dismissed from office and be disqualified from holding public office in this
1237 state for a period of five years thereafter.

1238 (6) This part does not apply to the property tax.

1239 Section 24. Section **59-7-101** is amended to read:

1240 **59-7-101. Definitions.**

1241 As used in this chapter:

1242 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
1243 and 59-7-106.

1244 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
1245 through stock ownership with a common parent corporation that meet the following
1246 requirements:

1247 (i) at least 80% of the stock of each of the corporations in the group, excluding the
1248 common parent corporation, is owned by one or more of the other corporations in the group;
1249 and

1250 (ii) the common parent directly owns at least 80% of the stock of at least one of the
1251 corporations in the group.

1252 (b) "Affiliated group" does not include corporations that are qualified to do business
1253 but are not otherwise doing business in this state.

1254 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
1255 is limited and preferred as to dividends.

1256 (3) "Apportionable income" means adjusted income less nonbusiness income net of
1257 related expenses, to the extent included in adjusted income.

1258 (4) "Apportioned income" means apportionable income multiplied by the
1259 apportionment fraction as determined in Section 59-7-311.

1260 (5) "Business income" means income as defined in Section 59-7-302.

1261 (6) "Corporate return" or "return" includes a combined report.

1262 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
1263 than 50% of the outstanding voting stock of:

1264 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue
1265 Code, except that 50% shall be substituted for 80%;

- 1266 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
1267 Code, except that 50% shall be substituted for 80%; or
- 1268 (iii) three or more corporations each of which is a member of a group of corporations
1269 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:
- 1270 (A) a common parent corporation included in a group of corporations described in
1271 Subsection (2)(a)(i); and
- 1272 (B) included in a group of corporations described in Subsection (2)(a)(ii).
- 1273 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
1274 Internal Revenue Code.
- 1275 (8) "Corporation" includes:
- 1276 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
1277 Code; and
- 1278 (b) other organizations that are taxed as corporations for federal income tax purposes
1279 under the Internal Revenue Code.
- 1280 (9) "Dividend" means any distribution, including money or other type of property,
1281 made by a corporation to its shareholders out of its earnings or profits accumulated after
1282 December 31, 1930.
- 1283 (10) (a) "Doing business" includes any transaction in the course of its business by a
1284 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
1285 this state.
- 1286 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
- 1287 (i) the right to do business through incorporation or qualification;
- 1288 (ii) the owning, renting, or leasing of real or personal property within this state; and
- 1289 (iii) the participation in joint ventures, working and operating agreements, the
1290 performance of which takes place in this state.
- 1291 (11) "Domestic corporation" means a corporation that is incorporated or organized
1292 under the laws of this state.
- 1293 (12) (a) "Farmers' cooperative" means an association, corporation, or other
1294 organization that is:
- 1295 (i) (A) an association, corporation, or other organization of:
- 1296 (I) farmers; or

1297 (II) fruit growers; or
1298 (B) an association, corporation, or other organization that is similar to an association,
1299 corporation, or organization described in Subsection (12)(a)(i)(A); and
1300 (ii) organized and operated on a cooperative basis to:
1301 (A) (I) market the products of members of the cooperative or the products of other
1302 producers; and
1303 (II) return to the members of the cooperative or other producers the proceeds of sales
1304 less necessary marketing expenses on the basis of the quantity of the products of a member or
1305 producer or the value of the products of a member or producer; or
1306 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
1307 other persons; and
1308 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at
1309 actual costs plus necessary expenses to the members of the cooperative or other persons.
1310 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
1311 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1312 Rulemaking Act, shall define:
1313 (A) the terms:
1314 (I) "member"; and
1315 (II) "producer"; and
1316 (B) what constitutes an association, corporation, or other organization that is similar to
1317 an association, corporation, or organization described in Subsection (12)(a)(i)(A).
1318 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
1319 requirements under federal law for a farmers' cooperative.
1320 (13) "Foreign corporation" means a corporation that is not incorporated or organized
1321 under the laws of this state.
1322 (14) (a) "Foreign operating company" means a corporation that:
1323 (i) is incorporated in the United States; and
1324 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
1325 conducted outside the United States.
1326 (b) "Foreign operating company" does not include a corporation that qualifies for the
1327 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

1328 (15) "Foreign sales corporation" means a corporation as defined in Section 922,
1329 Internal Revenue Code.

1330 (16) "Income" includes losses.

1331 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective
1332 during the year in which Utah taxable income is determined.

1333 (18) "Nonbusiness income" means income as defined in Section 59-7-302.

1334 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the
1335 last day of the taxable year of the S corporation, is:

1336 (a) an individual not domiciled in Utah; or

1337 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

1338 (20) "Related expenses" means:

1339 (a) expenses directly attributable to nonbusiness income; and

1340 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
1341 and business income which bears the same ratio to the aggregate amount of such interest or
1342 other expense, determined without regard to this Subsection (20), as the average amount of the
1343 asset producing the nonbusiness income bears to the average amount of all assets of the
1344 taxpayer within the taxable year.

1345 (21) "Resident shareholder" means any shareholder of an S corporation who is not a
1346 nonresident shareholder.

1347 (22) "S corporation" means a small business corporation as defined in Section 1361,
1348 Internal Revenue Code.

1349 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
1350 Section 168, Internal Revenue Code.

1351 (24) "State of the United States" includes any of the 50 states or the District of
1352 Columbia and "United States" includes the 50 states and the District of Columbia.

1353 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such
1354 calendar year upon the basis of which the adjusted income is computed.

1355 (b) In the case of a return made for a fractional part of a year under this chapter or
1356 under rules prescribed by the commission, "taxable year" includes the period for which such
1357 return is made.

1358 (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

1359 (27) "Threshold level of business activity" means business activity in the United States
1360 equal to or greater than 20% of the corporation's total business activity as determined under
1361 Section 59-7-401.

1362 (28) Except as provided in Section 59-7-102, "unadjusted income" means federal
1363 taxable income as determined on a separate return basis before intercompany eliminations as
1364 determined by the Internal Revenue Code, before the net operating loss deduction and special
1365 deductions for dividends received.

1366 (29) (a) "Unitary group" means a group of corporations that:

1367 (i) are related through common ownership; and

1368 (ii) by a preponderance of the evidence as determined by a court of competent
1369 jurisdiction or the commission, are economically interdependent with one another as
1370 demonstrated by the following factors:

1371 (A) centralized management;

1372 (B) functional integration;

1373 (C) economies of scale.

1374 (b) "Unitary group" does not include S corporations.

1375 (30) "Utah net loss" means the current year Utah taxable income before Utah net loss
1376 deduction, if determined to be less than zero.

1377 (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable
1378 years that may be carried back or carried forward to the current taxable year in accordance with
1379 Section 59-7-110.

1380 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction
1381 less Utah net loss deduction.

1382 (b) "Utah taxable income" includes income from tangible or intangible property located
1383 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
1384 commerce.

1385 (33) "Utah taxable income before net loss deduction" means apportioned income plus
1386 nonbusiness income allocable to Utah net of related expenses.

1387 (34) (a) "Water's edge combined report" means a report combining the income and
1388 activities of:

1389 (i) all members of a unitary group that are:

1390 (A) corporations organized or incorporated in the United States, including those
1391 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
1392 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

1393 (B) corporations organized or incorporated outside of the United States meeting the
1394 threshold level of business activity; and

1395 (ii) an affiliated group electing to file a water's edge combined report under Subsection
1396 59-7-402(2).

1397 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
1398 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
1399 unitary group.

1400 (35) "Worldwide combined report" means the combination of the income and activities
1401 of all members of a unitary group irrespective of the country in which the corporations are
1402 incorporated or conduct business activity.

1403 Section 25. Section **59-7-102** is amended to read:

1404 **59-7-102. Exemptions.**

1405 (1) Except as provided in this section, the following are exempt from this chapter:

1406 (a) an organization exempt under Section 501, Internal Revenue Code;

1407 (b) an organization exempt under Section 528, Internal Revenue Code;

1408 (c) an insurance company that is otherwise taxed on the insurance company's premiums
1409 under Chapter 9, Taxation of Admitted Insurers;

1410 (d) a building authority as defined in Section 17A-3-902;

1411 (e) a farmers' cooperative; or

1412 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
1413 ownership interest in:

1414 (i) a project, as defined in Section 11-13-103; or

1415 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1416 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
1417 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
1418 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
1419 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1420 (a) that person's ownership of tangible personal property located at the premises of a

1421 printer's facility in this state with which the person has contracted for printing; or

1422 (b) the activities of the person's employees or agents who are:

1423 (i) located solely at the premises of a printer's facility; and

1424 (ii) performing services:

1425 (A) related to:

1426 (I) quality control;

1427 (II) distribution; or

1428 (III) printing services; and

1429 (B) performed by the printer's facility in this state with which the person has contracted
1430 for printing.

1431 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
1432 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
1433 8, Unrelated Business Income, to the extent provided in Part 8.

1434 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
1435 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
1436 Revenue Code, the organization's income is also taxable under this chapter.

1437 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in
1438 Section 7-9-3, is not exempt from this chapter beginning on the first day of the month
1439 immediately following the day on which the nonexempt credit union becomes a nonexempt
1440 credit union under Section 7-9-55.

1441 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit
1442 union that is subject to this chapter in accordance with Subsection (5)(a) is an amount equal to
1443 the federal taxable income the nonexempt credit union would have if the nonexempt credit
1444 union were subject to a federal income tax in the same manner as a state-chartered bank:

1445 (i) determined on a separate return basis before intercompany eliminations as
1446 determined by the Internal Revenue Code; and

1447 (ii) before:

1448 (A) the net operating loss deduction; and

1449 (B) special deductions for dividends received.

1450 Section 26. **Repealer.**

1451 This act repeals:

1452 Section 7-9-54, Electing to terminate grandfathering.

1453 Section 27. Financial Institutions Task Force.

1454 (1) There is created the Financial Institutions Task Force consisting of the following
1455 eight members:

1456 (a) three members of the Senate appointed by the president of the Senate, no more than
1457 three of whom may be from the same political party; and

1458 (b) five members of the House of Representatives appointed by the speaker of the
1459 House of Representatives, no more than four of whom may be from the same political party.

1460 (2) (a) The president of the Senate shall designate a member of the Senate appointed
1461 under Subsection (1)(a) as a cochair of the task force.

1462 (b) The speaker of the House of Representatives shall designate a member of the House
1463 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

1464 (3) In conducting its business, the task force shall comply with the rules of legislative
1465 interim committees.

1466 (4) Salaries and expenses of the members of the task force shall be paid in accordance
1467 with Section 36-2-2 and Legislative Joint Rule 15.03.

1468 (5) The Office of Legislative Research and General Counsel shall provide staff support
1469 to the task force.

1470 (6) The task force shall study:

1471 (a) the structural differences between credit unions and other financial institutions;

1472 (b) clarifying the language defining the appropriate purposes and operations of credit
1473 unions chartered in this state including:

1474 (i) what constitutes a meaningful affinity and bond among members of a credit union;
1475 and

1476 (ii) the cooperative and nonprofit structure of credit unions which requires that
1477 members have meaningful control over the resources of a credit union;

1478 (c) the policies that should govern all questions applicable to taxing or not taxing credit
1479 unions;

1480 (d) whether credit unions should be required to:

1481 (i) provide members greater control over whether earnings should be returned to
1482 members or used to further expand the operations of a credit union; or

1483 (ii) return a minimum percentage of a credit union's annual cash retained earnings to
1484 the members of the credit union in the form of cash dividends which would fundamentally
1485 reflect that credit unions are member controlled nonprofit cooperatives;

1486 (e) whether the judicial review process of decisions of the Commissioner of Financial
1487 Institutions should be modified;

1488 (f) (i) the powers and duties of the Commissioner of Financial Institutions to regulate
1489 the activities of credit unions and banks; and

1490 (ii) whether additional powers or duties should be given to the Commissioner of
1491 Financial Institutions;

1492 (g) what should be the appropriate field of membership requirements for a credit union;

1493 (h) (i) whether or not any credit union should be required to pay a competitive equity
1494 assessment;

1495 (ii) if any credit union should be required to pay a competitive equity assessment,
1496 which credit unions should be required to pay a competitive equity assessment; and

1497 (iii) how any competitive equity assessment to be paid by a credit union should be
1498 calculated including whether required reserves should be subtracted from any of a credit
1499 union's annual cash retained earnings of a credit union that may be subject to a competitive
1500 equity assessment;

1501 (i) the effect of a credit union chartered in this state converting to a federal credit union
1502 charter;

1503 (j) the methods by which financial institutions in this state may obtain capital;

1504 (k) the policies underlying whether or not to tax or assess other fees on credit unions;
1505 and

1506 (l) any other issues related to banks and credit unions that the task force determines to
1507 be appropriate.

1508 (7) The task force shall make a report to the Business and Labor Interim Committee,
1509 including any proposed legislation, by no later than November 30, 2003.

1510 Section 28. **Intent language.**

1511 In passing this legislation, it is the intent of the Legislature that:

1512 (1) the restrictions in Title 7, Chapter 9, Utah Credit Union Act, in effect on May 5,
1513 2003, including restrictions on fields of membership, branching, mergers, and other restrictions

1514 on activities of credit unions and related credit union service organizations, should remain in
1515 effect until such time as the Legislature adopts a competitive equity assessment or similar
1516 charge on credit unions the size and activities of which require that measures be taken to ensure
1517 competitive equity within Utah's financial market; and

1518 (2) if the Legislature does not adopt a formula for the competitive equity assessment in
1519 the 2004 General Session as provided in this act, this act may not be interpreted to constitute an
1520 action by the Legislature to facilitate credit unions expanding membership or engaging in
1521 activities that are not permitted by Title 7, Chapter 9, Utah Credit Union Act, in effect on May
1522 5, 2003.

1523 **Section 29. Appropriation.**

1524 There is appropriated from the General Fund for fiscal year 2002-03, a one-time
1525 appropriation of:

1526 (1) \$3,500 to the Senate to pay for the compensation and expenses of senators on the
1527 task force;

1528 (2) \$6,000 to the House of Representatives to pay for the compensation and expenses
1529 of representatives on the task force; and

1530 (3) \$30,000 to the Office of Legislative Research and General Counsel to pay for
1531 staffing the task force.

1532 **Section 30. Contingent effective and repeal dates.**

1533 This act takes effect May 5, 2003 except that if the Legislature adopts a formula to
1534 calculate the competitive equity assessment in the 2004 Annual General Session as provided in
1535 Section 7-9-56, which is contingently effective on the Legislature adopting the formula, then
1536 the following changes take effect on May 3, 2004:

1537 (1) the amendments in this act to Section 7-1-708 take effect;

1538 (2) in Subsection 7-9-3(6) bracket "or 7-9-53";

1539 (3) in Subsection 7-9-5(12)(b) after "(b)" insert "except as provided in Section
1540 7-9-57,";

1541 (4) in Subsection 7-9-12(3) bracket "or 7-9-53";

1542 (5) amend Subsection 7-9-20(7)(a)(i) to read: "(i) except as provided in: (A)
1543 Subsection (8); or (B) Section 7-9-57; and";

1544 (6) (a) bracket;

- 1545 (i) all of Subsection 7-9-39(4);
1546 (ii) Subsection 7-9-39(5)(b); and
1547 (iii) all of Subsection 7-9-39(6);
1548 (b) renumber Subsection 7-9-39(5)(a) as Subsection 7-9-39(4); and
1549 (c) insert the following: "(5) Except as provided in Section 7-9-39.5, the commissioner
1550 may not approve a merger plan under which a nonexempt credit union merges with another
1551 credit union before the day on which the nonexempt credit union files a notice of election to
1552 pay the competitive equity assessment as provided in Section 7-9-56."
1553 (7) in Section 7-9-39.5, bracket "If a credit union is merged" and insert
1554 "Notwithstanding Subsection 7-9-39(5), a nonexempt credit union may merge" and after "19"
1555 delete the remainder of the section except for the ".";
1556 (8) (a) in Subsection 7-9-51(1) bracket "Except as provided in Subsection (3), the" and
1557 insert "The";
1558 (b) in Subsection 7-9-51(1)(c) bracket "a single county" and insert "one or more
1559 counties"; and
1560 (c) bracket Subsections 7-9-51(3) and (4);
1561 (9) (a) in Subsection 7-9-52(1)(a) bracket "one" and insert "a";
1562 (b) bracket Subsection 7-9-52(5); and
1563 (c) renumber remaining subsections accordingly;
1564 (10) Section 7-9-53 is repealed;
1565 (11) Section 7-9-56 as enacted by this act takes effect;
1566 (12) Section 7-9-57 as enacted by this act takes effect; and
1567 (13) the amendments in this act to Section 59-1-403 take effect.
1568 **Section 31. Repeal date for task force.**
1569 The uncodified material enacted in Section 27 is repealed November 30, 2003.